

**TOWN OF WINDSOR
ZONING BOARD OF APPEALS**

**Regular Meeting
September 15, 2004**

Approved

PRESENT: Commissioner Max Kuziak (standing in for Chairwoman Frances Rothenberg), Commissioners John Cowan, Joseph Breen, Alternates Thomas Ferranti and George Bolduc and Zoning Enforcement Officer Steve Dupre

EXCUSED ABSENCE: Chairwoman Rothenberg

The Meeting was called to order at 7:00 P.M. by Acting Chairman Kuziak in the Ludlow Room, 275 Broad Street, Windsor, Connecticut.

ESTABLISHMENT OF QUORUM:

Acting Chairman Kuziak announced the five board members who were present: himself and Commissioners Cowan and Breen and Alternate Commissioners Ferranti and Bolduc. Because five regular members were present a quorum was established.

CALL TO ORDER – PUBLIC HEARINGS:

LEGAL NOTICE:

The Legal Notice submitted by Helene H. Shay, Secretary, which appeared in the Hartford Courant on September 2 and September 9, 2004, was read by Alternate Ferranti and included the following variance applications to be heard:

Application #04-13: 10 Franklin Lane – Appeal of the Zoning Officer Decision under CT General Statute Section 8-7 with respect to Windsor Zoning Regulation Section 4.4.5 – Commercial Vehicle Parking

Application #04-07: 280 Windsor Avenue – Section 3.1.18 – Light Pole Height and Intensity – Continued from July 21st regular meeting at applicant's request

Application #04-14: 128 Joshua Hill – Section 4.4.2 – Swimming Pools, Section 2.1.3 Side Yard Variance and Section 4.5.13A(1) Flag Lots

PROCEDURES:

Commissioner Cowan read the procedures for presentation of an application. He then queried the audience for any questions regarding the procedures which were read. Hearing no comments, Acting Chairman Kuziak declared the hearings proceed.

PUBLIC HEARINGS/ #04-13: 10 Franklin Lane – Appeal of the Zoning Officer Decision under CT General Statute Section 8 – 7 with respect to Windsor Zoning Regulation Section 4.4.5 – Commercial Vehicle Parking

DISCUSSION:

Appearing to discuss this Application was Zoning Enforcement Officer Dupre. He said he would like to start by entering into the record the various correspondences that had gone on within the last month or two between the owner and himself. He stated there were eight letter documents and two photographs (Exhibits 1-10).

Mr. Dupre said he received a complaint from the zoning office through a computer-complaint system that the Town maintains. He said one of his assistant zoning officers went out to the site and met with Mr. and Mrs. Francis who were in the audience and who will be speaking after him. He said they were very cordial and believed they did not know the regulations. He said that Mr. Francis indicated in document #4 that he intended to appeal but at that point it had just been a verbal conversation and one really can't appeal until a violation order has been received. He said he sent out a violation order on July 2nd, and on July 13th he received an appeal letter from Mr. Francis within the 15 days allowed by the statute.

Mr. Dupre said the matter concerns a large pick-up truck which exceeds the gross vehicle weight allowed by the Town. He said that the Town ordinance allows one commercial vehicle up to $\frac{3}{4}$ of a ton which is basically in the line of Ford trucks (F250), and Mr. Francis' truck is an F350 which is a one-ton rated truck. He said he believes that technically it does not meet the zoning statutes/zoning ordinances for the Town of Windsor. He said he believes all the board members have copies of the exhibits in their packages.

The board members responded in the affirmative.

Acting Chairman Kuziak said that in the picture he has, it is very hard to make out the vehicle. He asked Mr. Dupre if could pass around the copies taken from the bulletin board and Mr. Dupre did so.

Acting Chairman Kuziak asked if it were a dump truck or a pick-up truck.

Mr. Francis answered from the audience that it was a pick-up truck with a dump body.

Mr. Dupre said it would be the black Ford on exhibits 9 and 10.

Mr. Dupre said that unless the board has any further questions of him, he thought the copies pretty much described the Town's position.

Commissioner Breen asked Mr. Dupre if he knew the actual weight of the vehicle.

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Mr. Dupre said he didn't know what the gross vehicle weight rating would be on a 350 pick-up truck. He said he knew that 350's carrying capacity is one ton.

Commissioner Breen asked Mr. Dupre if he knew if this vehicle was primarily parked on the street, in Mr. Francis' driveway or in the garage.

Mr. Dupre answered that when he was down there, most of the time it was parked in the driveway. He said they only went down there a couple of times to ascertain the violation.

Alternate Ferranti asked Mr. Dupre if he spoke to the person filing the complaint.

Mr. Dupre said that he hadn't spoken personally to them. He said Mr. Sterchak (Mr. Dupre's assistant zoning officer) couldn't be here tonight because of other personal commitments and he believes Mr. Sterchak had clearly captured the essence of his conversations in the various e-mails and transmittals in the packet.

Alternate Ferranti said that the reason he asked the question was that when the complaint was initially filed, it said "early morning noise as the equipment and late evening noise when the crew returns." He said he wasn't certain if the noise was coming from the equipment itself or from the crew or both.

Mr. Dupre said that that was actually referred to the Windsor Police Department for ascertaining under the noise ordinance for the Town because the Town doesn't enforce that. He said he thought there was a memo there to Sue Brannack.

Commissioner Breen asked Mr. Dupre about the regulation regarding commercial vehicles in Town. He asked if that were in effect here or was the issue about size.

Mr. Dupre said that an individual is allowed under Section 4 of zoning in a residential district one commercial vehicle up to $\frac{3}{4}$ of a ton.

Commissioner Breen repeated what Mr. Dupre had just stated (so they are allowed one up to $\frac{3}{4}$ of a ton) and asked if this one [truck] was over that amount.

Mr. Dupre answered in the affirmative.

Commissioner Cowan stated after reading the applicant's letter of July 13th to Mr. Dupre, it referred to the fact that Mr. Dupre's office received the letter in question from the Town notifying them of the complaint in violation. He asked Mr. Dupre if the complaint had to do with the vehicle or the noise.

Mr. Dupre stated that the complaint had to do with operating a landscape business and it was ascertained during conversations that the primary vehicle for the landscape business was the vehicle in question.

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Acting Chairman Kuziak asked Mr. Dupre if he didn't get a complaint, would there be a problem. He said he could point out in many, many areas of this Town where vehicles are parked in driveways overnight. He said he knew of at least three vans with business signs on them that are parked in one driveway every night.

Mr. Dupre said that at the Town's discretion or decision, they respond to complaints on zoning.

Mr. Kuziak said they [the Francis'] got the truck in August, 2001- three years ago - and asked Mr. Dupre if it wasn't a problem until now.

Mr. Dupre said apparently not and that apparently nobody voiced a concern over the issue.

Alternate Ferranti asked Mr. Dupre if they [the Francis'] were to get a special use for their property to run the landscaping business, would they be able to have the one-ton truck there.

Mr. Dupre said it would be a possibility if it were presented as part of the special use. He said that the expanded special use has only been in force for about a month or so. He said that at the TP&Z's last meeting, they approved that new ordinance which allows the expanding

Alternate Ferranti said it seemed to him that there were many landscape businesses in Town that are run out of people's homes.

Mr. Dupre said he agreed wholeheartedly.

Alternate Ferranti said as he was looking at the complaint, that was his original question. He said the complaint really wasn't initiated because of the truck; it was initiated because they [the neighbors] were unhappy that there was a landscaping business being run out of their home which is in and of itself illegal.

Mr. Dupre agreed. He said it depended upon the severity of it. He said if one has a business address and a telephone and drive a personal truck back and forth, that's ok. He said he guessed if one starts storing a lot of equipment, one has to have a special use permit. He said one can't just start filling up their yard with things related to a business in a residential zone. He said when a call comes in, he has to go.

Appearing to discuss this Application was Errol and Jacqueline Francis of 10 Franklin Lane [Windsor].

Mr. Francis stated that last year in roughly June/July he modified his house. He said that while he was at work, the Town got a complaint that he was running a business out of his house and that he needed to stop. He called back [the Town] to find out what exactly was the complaint. He said that whatever he's been doing, he's been doing for over four years. He said to the Town that he wanted to know what the zoning laws were. He said that was when he started to be in contact as much as possible with Andy [Sterchak] to understand the ramification of everything. He said that during that time, he [Andy] informed him that if he did have a trailer, the trailer

should be parked where it cannot be seen. He said during that time there was a complaint about some noise.

Mr. Francis said that there are about four or five children on his street and because he uses the truck as his primary vehicle, he put a reverse alarm on it so that if he is reversing his truck, the beeper will come on so the kids would move out of the way.

Mr. Francis said so when they said there was noise, the only thing that he could think of that would be making noise is when he comes in late in the evening – be it from his regular activities and not necessarily from doing the landscaping.

Mr. Francis said in January he went to a garage and had them put a switch on the truck to shut it off. He said the complaints still kept coming so he went to the next step and purchased an enclosed trailer. He said that in an enclosed trailer there is no way possible to tell what's in it. He said if he comes home in the evening, he doesn't need to unload or put anything in the trailer because it's enclosed. He said then he went further and fenced in the property so that at this time once the vehicle is parked at the trailer, there was no way possible from the road to see what's behind the property.

Mr. Francis said that all along he informed Andy [Sterchak] of what he was doing to get this thing to go away and it has not. He said that in the final analysis while talking to Andy and he realized that everything was up-to-date, he said to him that the only other thing was that he parked sometimes outside because his primary vehicle is the truck and Andy asked what was the weight of the truck. Mr. Francis said he answered Andy that it was a 350. He said that he thought there might be something about the size of the truck. He said Andy looked it up and then said the issue would have to be brought up to the board of appeals. He said that was when the letter was sent out and he sent his letter to the board so that he could appeal the issue. He said that was his primary vehicle; he uses it to go to church, to go to work and he wished to say that the landscaping business is not his primary business. He said it was a small-scale operation and he has a regular job.

Mr. Francis said for them [the neighbors] to say that 7:00 to 8:00 in the morning there is noise, is kind of difficult because he goes to a regular job in the daytime. He said that after reading the audit, it says that basically the commercial truck should not be more than $\frac{3}{4}$ ton capacity.

He said he's looked at edmon.com and most large trucks are over that – F150, the Tundra, the Titan. He said big, good size trucks today are going to supercede that capacity and his truck exceeds it by 500 pounds. He said that when buying trucks today, he's not going to find out what the capacities are. He said he would go with what is presented to him as the best deal; and when he purchased the truck three years ago, that was a truck sitting on the lot. He said it was a nice green truck, he got a good deal, he took it, he's had that truck since July, 2001, he's been using it and there has never been a problem until the complaint that came last year.

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He said he has done his best to comply with everything that Windsor and the Zoning Board has encouraged him to do and the only thing left at this point is that he needs to use the truck and if he doesn't have it, it will be a problem. He said he has no other place to park it.

Acting Chairman Kuziak asked Mr. Francis if he checked the truck for any other noise other than the reverse beeper.

Mr. Francis said the only other thing is that it is a diesel truck. He said they do run a little bit louder than the gas. He said that was a decision for economics because one does get better mileage. He said a lot of people are turning to diesel.

Acting Chairman Kuziak asked if the complainant stated the type of noise.

Mr. Francis said that when he got notification, he heard that there was just noise.

Commissioner Breen stated a scenario: if one is driving a motorcycle, unfamiliar with the state's regulation of needing a helmet, drive into one of the states, get pulled over and get a ticket because he/she doesn't have a helmet on and that state had a helmet law and he/she didn't know about it, they would still get a ticket, correct?

Commissioner Breen said that it looks like Mr. Francis didn't know the current zoning regulations in this Town and asked what should they [the board] do?

Mr. Francis said that was why he was bringing up his case to the Board of Appeals because since he didn't know and that in good faith has complied with everything else, he was seeking the board to understand the situation because he has not detracted in any way from the neighborhood; there is not equipment all over the place – making a mess of the neighborhood or destroying the neighborhood. He said that as far as he's concerned he had to come to the board for understanding because it's hard to replace a truck like that – it's very difficult. He said he could have gotten an F250 diesel and then that would have complied.

Mrs. Francis said that she didn't think the appeal was based necessarily on ignorance saying they didn't know; but having found out (because they did do the research) and saw that. She said that what has been said is exactly what the ordinance states. She said they decided to take it a step further. She said a lot has been invested in the truck and even to sell it and try to repurchase at this point would incur a lot, which they are not in a position to do right now.

Commissioner Breen said the zoning regulations are in place to protect the Francis' and the entire neighborhood and the neighbors so obviously someone in the neighborhood/area is not happy with the whole thing.

Mrs. Francis said that from the conversation and what was specifically stated with the truck was the problem, it's just based on the dialogue they had with Andy. He said that might be the only other thing that might need to be addressed. She said that she didn't think the complaint specifically related to the truck, but they wanted to make sure that it was settled; all the potential

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problems or points that could be used are addressed; and that there would be complete resolution to the situation.

Mr. Francis said that from the top of his head he knows there is another diesel truck bigger than his. He said he could walk his neighborhood and see other trucks that are much larger than his plus they are diesel, but he's the one being pointed at this time.

Commissioner Breen said that the Town doesn't have the manpower to police every street and every home and what happens is that when flags come up, people complain and that's what happened here.

Mr. Francis said he understood that.

Commissioner Breen said it wasn't a comfortable spot for anyone to be in.

Alternate Ferranti said that one of the things that the board looks at when they look at an appeal for a variance is hardship. He asked if Mr. and Mrs. Francis had figured out how much money they would lose if they were forced into getting rid of the truck.

Mr. Francis said he has not put it down on paper. He said it had not been a year since the bed went on [the truck]. He said to get another truck to put on the bed the way it is would be costly.

Alternate Ferranti asked how much the truck cost three years ago when it was purchased.

Mr. Francis said \$35,000.

Alternate Ferranti asked what Mr. Francis does with the truck.

Mr. Francis said it is his primary vehicle; he drives it a lot; he pulls a trailer two or three times a week for a few hours.

Alternate Ferranti asked why he needed such a large dump-truck part.

Mr. Francis said that in the fall sometimes he picks up some leaves. He said it was easier and as he gets older, he's trying to get wiser.

Alternate Bolduc asked Mr. Francis if he parked the vehicle behind the fence so that it couldn't be seen from the street.

Alternate Ferranti asked the vehicle or the trailer.

Mr. Francis replied everything; he tries to park it behind the fence.

Mrs. Francis said her husband goes in and out.

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Mr. Francis said he goes out a lot and if his wife weren't here tonight and he was coming here, the truck would be left in front of the house until he is finished for the night.

Alternate Ferranti wanted to know where the vehicle was parked when the people complained.

Mr. Francis said the driveway goes to the side and to the back of the house.

Alternate Ferranti asked Mr. Francis again when people were complaining, was the vehicle parked in the driveway or parked in the back.

Mr. Francis said it was parked on the side of the house. He said the vehicle is never parked on the street.

Acting Chairman Kuziak wanted to know if it were a verbal complaint or a written complaint.

Mr. Francis said it was his understanding that it was verbal; it was called in.

Acting Chairman Kuziak asked if he knew when.

Mr. Francis said it's probably going back August or September of last year when it first started.

Mrs. Francis said if you say park on the street meaning left overnight or for a long period of time – if he comes in and anticipates going out shortly, it [the vehicle] might be left on the street for a short period of time, but it's never left on the street overnight.

Acting Chairman Kuziak asked if the complaints had been going on for a year or did the person making the complaint do it recently. He said the complaint was a year ago and the Francis' just got a letter from the Town July 2nd of this year. He asked what has happened between all this time.

Mr. Dupre asked the board to look at the computer response page – update response I.D. #3827 in the packet. He said if you look down there, you'll see June 27, 2004. He said we [the Town] are not aware of any complaints before we received this.

Commissioner Breen asked Mr. Dupre what about the complaints that the police received. He wanted to know if that was the same date.

Mr. Dupre said he was not sure because their [Police Department's] complaints don't go to them.

Acting Chairman Kuziak said to Mr. Francis that the complaints must have been directed to him.

Mr. Francis said that during construction of the house, he got a call from the Town saying that somebody stopped by and said he was running a business in the house and to stop whatever he was doing. He said he thought they meant that he was running a construction business so they were telling him to stop. He said that was verbal and nothing in writing. He said it's been verbal

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all along. He said certain things he could not do because the house was under construction and torn up. He said at that time he had to work with whatever circumstances he had. He said that as the house was finished, he was able to go to the next phase – enclose it, fence it off.

Acting Chairman Kuziak said he had a personal problem with that because he [Mr. Francis] had the truck for three years and had it two years before the complaints even started and all the complaints have been anonymous and it's hard to imagine in his mind what the problem is.

Commissioner Cowan said that if he understands it correctly, the person making the complaint - whoever it may be – is basically complaining (at two different timeframes) 7:00 to 8:00 at night and 7:00 to 8:00 in the morning. He asked the Francis' if they had any comments on that or wished to say anything that would make that different.

Mr. Francis said that was very difficult because he doesn't do landscaping full time so there was no need for him to be going out 7:00 to 8:00 in the morning to do it.

Alternate Ferranti said Mr. Francis didn't have to do it every day, but asked if he on occasion started at 7:00 or 8:00 in the morning and go ahead and do that.

Mr. Francis said if he started that early, it's probably that he's leaving 7:00 in the morning to go somewhere, but that's very rare for him to go that early because he can't go onto people's property that early on a Saturday morning.

Acting Chairman Kuziak asked about his regular job.

Mr. Francis answered by saying that on his regular job he would not be carrying anything; he would just be driving out with the truck. He said with his regular job he usually leaves between 6:30, 7:00, 7:30, 8:00.

Alternate Bolduc asked if Mr. Francis had people who worked for him that meet him there when he does landscaping.

Mr. Francis said there was a guy who used to help him last year so that he wouldn't be running out because he's very involved in other activities. He said there was a gentleman who used to come who had a Camero at 10:00 in the mornings and go out and he'd come back so sometimes he could go out.

Mrs. Francis said that was for a short period of time and that was not the case anymore.

Commissioner Breen asked how many other vehicles the Francis' personally owned.

Mr. Francis said that at this time they have the Forerunner and right now he's trying to play with a little bucket car but it has a lot of mechanical problems. He said a friend of his had a little '92 Subaru which has a lot of mechanical problems, but he doesn't want to put any money

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into it. He said it has 178,000 miles on it which he plans to get rid of which he bought about two weeks ago. He said it's got too many problems and it's not worth the investment.

Commissioner Breen reiterated that Mr. Francis has the Subaru that he doesn't drive; he's got the truck and asked him what else he has.

Mr. Francis answered the Forerunner which his wife uses as her vehicle.

Mrs. Francis said the nature of her job does not allow her to carpool with her husband because sometimes she's out of Town for a full week. She said she's an auditor so she travels wherever they send her. She said they have two kids that they have to get to and from school and to their various activities so he needs a vehicle.

Commissioner Breen asked how the Francis' think the board could work out the whole problem. He finished off by saying that that was up to the board to decide.

Acting Chairman Kuziak read the memo dated Thursday, September 9, 2004 from John and Terry Greco of 20 Franklin Lane to Lori Hartmann, Zoning Board of Appeals, which is as follows:

“Regarding the request from 10 Franklin Lane to park commercial vehicles on the street, (which I understand is not zoned for that purpose) we are opposed to their request.”

Acting Chairman Kuziak said that he didn't realize they were parking on the street and asked if they were.

The Francis' answered that they were not.

Acting Chairman Kuziak said they were opposed to that – parking on the street.

Acting Chairman Kuziak asked if there were anyone present who wished to speak against the application or anyone neutral.

Mary Johnson of 19 Franklin Lane [Windsor] stepped forward to speak against the application. She said she wasn't issued a notice of this [meeting] nor was she on the list, but said she looks right at that house. She said she tries to get along with her neighbors and this has been going on for some time and she has ignored it, but even today she said she heard noises in the back yard. She said she didn't know if that pertained to this or not. She said her feeling about this is that if the board lets this pass, it's setting a precedent that anybody else can come and make noises on the street and that's her only reason for objecting.

Commissioner Breen asked Mrs. Johnson what noises she was hearing – mechanical truck noises or people working noises, people talking.

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Mrs. Johnson said she wasn't aware that people were working on them [the vehicles] although she did hear some terrible noises that afternoon but it was in their back yard so she said she didn't know what it was.

Commissioner Breen asked Mrs. Johnson what noise bothered her the most.

Mrs. Johnson said it was just the noise of the truck on the street.

Commissioner Breen asked – running, starting, leaving.

Mrs. Johnson replied in the affirmative. She said she lives at the very end of the cul-de-sac so that she's not aware of it as some people are. She said her objection really is that she doesn't want the board to set a precedent. She said it's a residential area and she doesn't want the board to set a precedent that anybody else can do it. She said that was her objection.

Acting Chairman Kuziak said the issue here was that certain decibels are allowed in any neighborhood until a certain time at night and someone can buy a diesel car that could be just as noisy.

Mrs. Johnson said that she had a diesel car but it wasn't like that.

Acting Chairman Kuziak asked if there were anyone else wishing to speak neutrally.

Myron Yousman of 9 Washington Road [Windsor] approached the board. He said he lives approximately $\frac{1}{4}$ - $\frac{1}{8}$ of a mile, two houses, across the street from the property in question. He said he has a small daughter; and when he saw the sign, he became a little alarmed and concerned because he didn't know what it meant. He said that his first reaction brought up the question of whether or not there was going to be a business set up there. He said he had a lot of questions and that is why he decided to come to the meeting.

Acting Chairman Kuziak asked to what sign Mr. Yousman was referring.

Commissioner Breen answered that the sign was the notice of the hearing.

Mr. Yousman continued by saying that he had concerns about his daughter's safety; but from what he's heard tonight, it's clear that we are not talking about setting up a business in a residential area. He said what we really are talking about is some noise and a truck that exceeds the capacity as stated in the regulations.

Acting Chairman Kuziak said the only violation is the size of the vehicle. He said there is no noise violation here. He said people may not like the noise, but there is no violation.

Mr. Yousman said that the noise has not been an issue with him and that is not to say that it could be an issue for someone else. He said that it appears that it is an issue for some people in the neighborhood. He asked the board how they would determine if the noise was an issue.

Acting Chairman Kuziak said that at this point they will not [determine if the noise was an issue] because there is no specific violation for noise.

Commissioner Breen said that was not the issue they are dealing with.

Acting Chairman Kuziak repeated that it is the weight and size of the vehicle in question.

Mr. Yousman said that he thought his questions were being answered and that his main concern was if the Francis' were setting up a business in the neighborhood because it is a residential neighborhood with a very nice character to it – quiet - the houses are on nice size lots – a nice neighborhood to raise a family. He said when he saw the sign he panicked because he thought maybe they were going to change the character of the neighborhood.

Acting Chairman Kuziak said that if the gentleman were to set up a business there, he would have to go to the Town for a special use permit because it's not zoned for business. He said there are many people in the Town who conduct (what he would call) business out of their homes – low key. He said he knows people who do women's hair in their basement; he knows people who do carpentry and make Adirondack chairs for sale out of their homes. He said they are all businesses – part-time businesses. He said they are hobbies that have become businesses and that's all over Town, but they are not bonafied businesses.

Commissioner Breen said there are three issues here that have come up with this application - one is the noise which the board can't deal with because there hasn't been a formal complaint; and if there was, the board wouldn't be the one to straightened that out. He said the other one is the landscaping business and like Commissioner Kuziak was saying, the board wouldn't be addressing that either. He said that the only issue they are really addressing is the size of the vehicle. He said that the zoning regulations that this Town has set forth specifically say the size of the vehicle that is acceptable in a residential area and the size of the Francis' vehicle is bigger and what the board has to do is determine if they get a variance for that or do they not.

Mr. Yousman asked if it was determined that they should get a variance for it [the truck], what would be the limit and would that then allow them to get two or three trucks of that size.

Acting Chairman Kuziak said if the board was to grant a variance, it could put restrictions on it.

Mr. Yousman said that in his opinion if a variance were to be granted, the restriction would be that it would be limited to the one vehicle and not allowed to go beyond that.

Commissioner Cowan said that he didn't think they were even talking about a variance here. He said that what they are talking about is a cease and desist order that has been issued by the zoning official.

Commissioner Breen said it was an appeal to the cease and desist order – not a variance.

Mr. Yousman asked the board if the appeal were to be granted, would they then be allowed to have more than one truck of that size.

Commissioner Breen said that the appeal would be either to yes that one particular truck is approved to be there or no he cannot have that truck. He asked Mr. Dupre if that were correct.

Mr. Dupre said that basically the board is hearing an appeal of a decision of the zoning officer and whether that zoning officer issued it [the order] correctly or not correctly.

Commissioner Breen said that if the zoning officer issued it [the order] correctly, then the truck cannot stay there; and if he issued it incorrectly, the one truck can stay there.

Alternate Ferranti asked if it [the appeal] is really saying whether it [the order] was issued correctly and not whether or not the board is going to grant a variance.

Mr. Dupre said that was correct and if the board decides that he [the zoning officer] issued it [the order] correctly, then the applicant can file for a variance. He said right now he [Mr. Francis] is questioning whether he [the zoning officer] did the right thing.

Alternate Ferranti said he was just taking the next step ahead. He said they haven't even applied for a variance.

Acting Chairman Kuziak asked Mr. Dupre if the board was to uphold the appeal as being valid, the Francis' can keep the vehicle there if they immediately submit an application for a variance until the hearing.

Mr. Dupre said no if they oppose his decision, the vehicle stays.

Acting Chairman Kuziak said to Mr. Dupre if the board upholds his decision and they turn and immediately put a variance request in.

Mr. Dupre said either that or the Francis' go for the new expanded special use.

Acting Chairman Kuziak asked if the Francis' could keep the vehicle there while it's happening.

Mr. Dupre said yes, as long as they are appealing and it's not a life-threatening situation, we stay for the enforcement.

Mr. Yousman said he could express his opinion or concern by saying that if it did not go beyond the one vehicle, he would personally have no objection; but if it got to the point where there were several of these vehicles involved and the business started to expand in that way, then he would have to say that he would be very much opposed to that because he said he believes that would have a bad impact on the nature of that particular residential neighborhood.

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Acting Chairman Kuziak read from the Town of Windsor's Zoning Regulations, Section 4.4.5 Commercial Vehicles, where it states "The parking of no more than one commercial vehicle..." so Mr. Francis would not be allowed more than one.

Mr. Yousman asked even with the special variance.

Acting Chairman Kuziak said that would be relevant to the weight.

Commissioner Breen asked Mr. Yousman how we felt if everyone in his neighborhood wanted one.

Mr. Yousman said he would say ok but don't have two or three because it would start to get into where it is no longer a residential neighborhood; it's becoming a business area.

Acting Chairman Kuziak asked if there were anyone else who would like to speak on this subject.

Mr. Dupre said motor vehicle noises are exempt from the Town ordinance on noise. He said they are controlled by the DMV DOT, the State agency which sets the standards for motor vehicles and that's why we have emissions. He said the truck noises are specifically exempt under the Town ordinance. He said that the only thing they ask the PD [Police Department] to check is if there is a group of people starting engines or equipment before 7:00 in the morning which was not the case because there's a construction noise ordinance that doesn't start until 7:00 am. He said that all the talk about the diesel, etc. is nothing the Town would be able to consider.

Commissioner Cowan asked Mr. Dupre if there was any evidence of engines starting before 7:00.

Mr. Dupre said not to the best of his knowledge. He said that a couple of patrol cars go by in the morning and they are clean.

Mr. Albert Gaulzetti of 15 Franklin Lane [Windsor] approached the board and said he had a question about letting the Francis' have a variance to hold the truck over there and only one. He said his question was "could it be replaced with another one?" He said he hoped they would say no.

Commissioner Breen reminded Mr. Gaulzetti that they are not doing the variance tonight. He said they are doing the cease and desist order.

Acting Chairman Kuziak said the variance goes with the property involved which would be this particular truck.

Mr. Gaulzetti asked when Mr. Francis goes to buy another truck, could he buy the same one again.

Acting Chairman Kuziak said unless the board conditions it; but if the board upholds the building official, then the Francis' will have to submit a variance and there will have to be another hearing which Mr. Gaulzetti can come to.

Mr. Francis approached the board with his rebuttal/cross examination. He said he wanted to speak regarding the noise that was heard today. He said that is somewhat impossible for that noise to have come from 10 Franklin Lane and he stated the reason. He said he took his wife to work today so the truck did not move until approximately 4:30. He said everything was already loaded onto the truck. He said he drove out; and up to the point when he was coming back to come to the Zoning Board of Appeals meeting, he did not bring the truck home.

Acting Chairman Kuziak said he understood that and that he appreciated Mr. Francis' comments and with all due respect the hearing was not about noise. He said Mr. Francis didn't have to explain all his concerns. He said it [the hearing] is about the weight capacity of the vehicle only.

PUBLIC HEARINGS/ #04-07: 280 Windsor Avenue – Section 3.1.18 – Light Pole Height and Intensity

DISCUSSION:

Zoning Enforcement Officer Dupre addressed the board with a letter he had received today from the attorneys for the Hopewell Baptist Church. He said they were at the Town's Planning & Zoning Commission meeting last night and they received a modification to their site plan allowing the light poles to stay for the next couple of years as part of the overall five-year plan. He said the church made an error and needed money to fix the error and the Town Planning & Zoning went along with that. He read the letter and it is as follows:

“This letter is to withdraw the application of Hopewell Baptist Church in Hartford, Connecticut, for a variance dated May 11, 2004 concerning the height of light poles in the parking area.
Very truly yours, Richard A. Case, attorney for the Hopewell Baptist Church.”

PUBLIC HEARINGS/ #04-14: 128 Joshua Hill – Section 4.4.2 Swimming Pools, Section 2.1.3 Side Yard Variance and Section 4.5.13A(1) Flag Lots

DISCUSSION:

Appearing to discuss this application was David Lombardo. He stated he resides at 128 Joshua Hill [Windsor]. He said he applied for a side-yard variance. He said he had triple setbacks and that he was unaware of that at the time so the pool was exceeding that setback line, so he applied for that variance.

Acting Chairman Kuziak asked if the pool were already there.

Mr. Lombardo answered no. He said that the pool company applied for the permit and the permit was not going to 'pull' because it went beyond that line.

Alternate Bolduc asked why Mr. Lombardo couldn't put the pool anywhere else in his yard.

Mr. Lombardo said that with the topography he wasn't sure if Steve Dupre could comment on that either. He said that the only really logical spot would be the front yard, but who would want a pool there. He said his yard really drops off.

Commissioner Breen said he had looked over Mr. Lombardo's application as well as the plot plan and that in order for the board to grant him a variance, he would have to prove a hardship. He asked Mr. Lombardo if he agreed that the hardship on this particular application was primarily the topography and primarily being the grade of the property; and due to the fact of the elevation change on this property, he would not be able to put his pool in any other place, other than the front yard.

Mr. Lombardo said he would agree with that. He said that if he were to do some major, major changes to the existing topography, it would be very expensive. He said that Mr. Dupre could probably attest to that.

Mr. Dupre said he would agree with that statement.

Acting Chairman Kuziak asked Mr. Lombardo if he read the comments by the Inland/Wetlands representative in the Planning Department.

Mr. Lombardo replied that he had.

Acting Chairman Kuziak asked Mr. Lombardo if he had also read the Planning Department comments about screening, etc., and asked if he were willing to do all that.

Mr. Lombardo replied that he was. He said he would like to comment on the erosion that is going on with the heavy rains. He said he started the process and the permit wasn't allowed. He said the pool could be dug and some of that dirt would be sloped off some more so that's the reason for some of the minor erosion that is going on there. He said the final grade is not there because the pool is not in place yet.

Commissioner Cowan said that Mr. Lombardo has a flag lot there and facing on Joshua Hill Road is lot #130, which is directly in front of his [lot] except for the drive right-of-way. He wanted to know if there were a house there on that lot.

Mr. Lombardo answered there was.

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Commissioner Cowan stated one [the house on lot #130] that apparently meets requirements as far as back yard and side yard, etc. He asked about property #134 and said he seemed to remember reading that that might not be buildable.

Mr. Lombardo said there is already a house on that lot. He said he was talking to Lori who was helping him in the Building Department and with Steve and he was trying to find out what was going on with that lot. He said it was unclear by the Town what was going on with that and there is a house on that lot. He showed the board where the house was on the plot plan.

Commissioner Cowan asked Mr. Lombardo if there currently existed and never [would be] in the future anything on that lot #134 next to the pool.

Mr. Lombardo said there is already a house on that lot and it is a real skinny lot.

Acting Chairman Kuziak asked Mr. Dupre if he had all the responses from the abutters.

Mr. Dupre asked if Mr. Lombardo had the certified green cards.

Mr. Lombardo said Lori said they changed that and that they didn't need to be certified; he just had to mail them out 10 days prior. The mailing was done.

Mr. Dupre asked if Mr. Lombardo had a certificate of mailing.

Mr. Lombardo answered that he was told by Lori that the regular mailing was fine with the letter that Mr. Dupre had provided him.

Mr. Dupre said that Lori obviously was not here. He said he didn't know if Mr. Lombardo had heard it correctly or not but they have to go out certified mail or certificate of mailing or have the neighbors sign off that they received them [the letters]. He said that was a prerequisite to having this hearing heard.

Mr. Lombardo asked what he could do to fix that.

Commissioner Breen said the application could be tabled until next month.

Mr. Dupre said that if Mr. Lombardo had not sent the letters out certified, he should [do so] with the return receipt, with the little green card.

Mr. Lombardo said he had to do that the first time and maybe he misunderstood her; but when he goes through a process like this, he wanted to do everything the right way. He said this was a shock to him.

Acting Chairman Kuziak said unfortunately he felt badly about that, but the board has to have those responses before it can act.

Commissioner Cowan said it would be the same application with no additional charge.

Mr. Dupre said there would be no other changes and that he just had to bring in the proof that the legal notice was mailed. He said Mr. Lombardo could mail them out tomorrow – just change the date. He said he would have to get the new date from him and that would fulfill the notification requirements.

Mr. Dupre said that he hoped the board would vote to accept the certificate of mailing.

CLOSE OF PUBLIC HEARINGS:

Acting Chairman Kuziak **CLOSED the Public Hearing at 8:00 P.M.**

COMMENCE REGULAR BUSINESS MEETING/1. cases heard during Public Hearing/Application # 04-13: 10 Franklin Lane – Appeal of the Zoning Officer Decision under CT General Statute Section 8-7 with respect to Windsor Zoning Regulation Section 4.4.5 – Commercial Vehicle Parking

MOTION: Alternate Bolduc made a **MOTION and it was seconded by Commissioner Breen to UPHOLD the decision of the zoning official for Application #04-13: 10 Franklin Lane – Appeal of the Zoning Officer Decision under CT General Statute Section 8-7 with respect to Windsor Zoning Regulation Section 4.4.5 – Commercial Vehicle Parking**

Acting Chairman Kuziak asked all those in favor of upholding the zoning official's ruling signify by saying aye. He asked those opposed.

VOTE: In Favor: Unanimous

DISCUSSION:

Alternate Bolduc stated that it was a clear-cut case of the truck's being larger than the zoning regulations allow and the board was not there to discuss whether or not it should or shouldn't be – just whether the zoning official acted correctly. He said in his opinion he [the zoning official] did [act correctly] and the next step for the appellate would be to apply for a variance for that particular section 4.4.5.

Commissioner Cowan said that the issue here was whether the zoning officer acted properly in regard to the regulations in issuing the cease and desist order and he didn't think there was any question but that he has, and that he certainly believes it should be followed by a variance on the part of the applicant to consider authorizing the existing vehicle.

Commissioner Breen said the zoning regulations were in place but there are issues about the weight limits in a residential area and he said he certainly feels the zoning enforcement officer was indeed acting correctly. He said he would vote to uphold his cease and desist order.

Alternate Ferranti said he would echo the same sentiments of the other members [of the board]. He said he thought it [the order] was done properly and he wished to vote in favor of upholding the order.

Acting Chairman Kuziak said he felt sympathy for the applicant. He felt the zoning enforcement officer did exactly what the Town paid him for. He said, therefore, he would vote to uphold it.

Acting Chairman Kuziak said to Mr. Francis that he now has to submit a variance to aid this board; and according to the building official you may keep the vehicle there until you get it acted upon and we ask that you do that right away.

Mr. Francis addressed the board to make one final comment. He said that when the whole appeal came up, he and his wife thought it was an appeal for a variance. He said they were disputing whether or not we were complying...

Acting Chairman Kuziak interrupted Mr. Francis and said that when you apply for a variance there is a bunch of forms you have to fill out and pay a fee.

Mr. Francis said that that was what was told to them that because the truck was there, they needed to go to the Board of Appeals.

Acting Chairman Kuziak said that he was sure the Building Department would be glad to help you.

Commissioner Breen said for Mr. Francis to file it [application for a variance] and the board can see Mr. Francis next month.

Mr. Dupre said Mr. Francis should go for the special use permit.

Commissioner Breen said there was quit a few options Mr. Francis could take and that Mr. Dupre would help him through the process.

**COMMENCE REGULAR BUSINESS MEETING/1. cases heard during Public Hearing/
Application #04-07: 280 Windsor Avenue – Section 3.1.18 – Light Pole Height and
Intensity – Continued from July 21st regular meeting at applicant's request: The
application was WITHDRAWN by letter by the applicant's lawyer, Richard A. Case, dated
September 15, 2004**

**COMMENCE REGULAR BUSINESS MEETING/1. cases heard during Public Hearing/
Application #04-14: 128 Joshua Hill – Section 4.4.2 – Swimming Pools, Section 2.1.3 Side
Yard Variance and Section 4.5.13A(1) Flag Lots:**

**MOTION: Commissioner Bolduc made a MOTION and it was seconded by Commissioner
Breen to TABLE Application #04-14: 128 Joshua Hill – Section 4.4.2 – Swimming Pools,**

Section 2.1.3 Side Yard Variance and Section 4.5.13A(1) Flag Lots because the applicant does not have the abutters' letters accounted for.

Acting Chairman Kuziak asked all those in favor of passing variance #04-14 to signify by saying aye. He asked those opposed.

VOTE: In Favor: Unanimous

COMMENCE REGULAR BUSINESS MEETING/2. New Business/a. Communications from the Public

There were no Communications from the Public to be discussed.

COMMENCE REGULAR BUSINESS MEETING/2. New Business/b. Minutes Acceptance – April 18, 2001, June 16, 2004 and July 14, 2004

Acting Chairman Kuziak said Commissioner Cowan reminded the board that there only needed to be three people in attendance at a regular business meeting where the board would be voting to accept the minutes of prior meeting(s).

MOTION: Commissioner Cowan made a MOTION, seconded by Commissioner Breen, to APPROVE the Minutes of the Regular Meeting April 18, 2001

VOTE: In Favor: Unanimous

MOTION: Commissioner Breen made a MOTION, seconded by Commissioner Cowan, to APPROVE the Minutes of the Regular Meeting June 16, 2004

VOTE: In Favor: Unanimous

MOTION: Commissioner Ferranti made a MOTION, seconded by Commissioner Breen, to APPROVE the Minutes of the Special Meeting July 14, 2004

VOTE: In Favor: Unanimous

COMMENCE REGULAR BUSINESS MEETING/2. New Business/c. Communications from Board Members

Alternate Bolduc said the board has seen regulations change and get bigger. He said a certain size for an outbuilding has gotten bigger and houses used to be built with two-car garages and now they are building them with three and four. He asked Mr. Dupre if he could approach the TP&Z and ask them to reconsider that vehicle size [such as Mr. Francis'] be looked at, raising it to one ton because vehicles are getting bigger too.

Mr. Dupre said that there are more and more of these trucks falling into the higher rangers and are still being utilized in somewhat of a residential area.

Alternate Bolduc asked about the antique place in the center of Town – the one that used to be Windsor Liquors [Fusco's?], there's a box truck parked there all the time. He wanted to know if that big box truck was ok to park in that area because it's business zoned.

Mr. Dupre said it usually is and it's one truck up to 5 tons and a second truck up to 2 tons.

Commissioner Breen asked if the truck moved.

Alternate Bolduc said yes; it moves every day.

MOTION: Alternate Bolduc made a **Motion, seconded by Alternate Bolduc, to approach the Planning and Zoning Commission to look at the commercial limit on the trucks**

VOTE: In Favor: Unanimous

COMMENCE REGULAR BUSINESS MEETING/2. New Business/d. Communications from Staff Liaison

Zoning Enforcement Officer Dupre said for a long time his department has asked for certified mail as proof of a notice to abutters within 100 feet. He said it was expensive and homeowners are already paying an \$80 fee for an appeal. He said he and Town Planning and Zoning believes every other commission with an notification requirement in the Town has switched to certificate of mailing which is a record from the Post Office that says letters were sent to these people [abutters] and it's \$.30 versus almost \$5.00 an item. He said that if one has 20 abutters, it's \$100 for somebody versus \$6.00.

Commissioner Breen asked Mr. Dupre if that meant that one has proof that the letters were mailed but no proof that it was received. He said that people can get it in their mailbox and then throw it out.

Mr. Dupre said that was true and that people could get a certified letter and throw it out, too. They would sign for it but they don't have to open it.

Acting Chairman Kuziak said the board had a discussion about that a few months ago. He said he was opposed to it but the crew [board members] said go for it.

Mr. Dupre said he had explained it at a meeting as a request.

Commissioner Breen asked if the board were voting on it now.

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Mr. Dupre said the zoning bi-laws say that he has to notify and have two-thirds of the board present to vote on it. He said there are 8 members and only 5 are present and 6 members are needed to vote on the issue.

Acting Chairman Kuziak said the meeting doesn't have six members present very often. He said who was going to question it [a vote with only 5 members present] and that he would probably vote no because he was against it last time. He said two-thirds of the board is present.

Mr. Dupre said no, two thirds of the board members.

Commissioner Breen asked if it had to pass by two-thirds.

Mr. Dupre said no, it has to be two-thirds present to vote on it.

Commissioner Breen said we can't do that.

Mr. Dupre said there would be two notices in the paper; a sign posted on the property and the certificate of mailing to everybody within 100 feet. He said that technically all one has to do is have the sign and the two notices in the paper, but his staff feels it's a good idea...

Acting Chairman Kuziak asked Mr. Dupre if legally the letters have to be sent out.

Mr. Dupre said that he has not found where the Town had to and he's looked at the statutes.

Acting Chairman Kuziak said that technically they should have voted on this "poor guy" [Mr. Lombardo] tonight.

Mr. Dupre said that the application form is part of the regulation and it states that notification of the abutters within 100 ft. by certified mail is a requirement, so the changes in the application need to be changed to "within 100 ft. by certificate of mailing." He said it makes the ZBA look bad when people come up and asked "Why do you, Zoning Board of Appeals' officer, make me use certified mail when everybody else in Town does certificate of mailing. It's going to cost me \$100 and it only costs them \$6?" Mr. Dupre asked so what's my answer.

Acting Chairman Kuziak said they have 80% of the board present.

Commissioner Cowan said that going by the bi-laws, it says quorum for all public hearing. He read that for all public hearings, the quorum should be four members. He said this was not a public hearing we are talking about. He continued reading from the bi-laws and stated that for all routine business meetings, the quorum shall be three members.

Mr. Dupre said there was a part in the bi-laws for changing the bi-laws and he believed it was towards the end.

Commissioner Breen said to change the bi-laws more majority [was needed].

Acting Chairman Kuziak repeated that they have 80%.

Mr. Dupre read from the bi-laws: “The entire membership shall be permitted to vote on any motion regarding the proposed amendment. Four affirmative votes shall be required to approve any amendments to these bi-laws.

Commissioner Cowan said the entire membership may vote.

Acting Chairman Kuziak said we only have 63%.

Commissioner Cowan read from Section 7.4: “The entire voting membership (that’s eight people) shall be notified of the proposed amendment.” He said everyone was notified. He continued reading from Section 7.4: “Such notification need not give the exact word... The entire membership shall be permitted to vote. Four affirmative votes are required for approval.”

Commissioner Breen said the board should discuss it or if not, table it.

Mr. Dupre asked the board to table the issue until the next meeting.

Acting Chairman Kuziak said that he wished to make sure that Rosanne (Lombardo), Helen (Shay) and Fran (Rothenberg) are made aware and that copies are sent to them.

Commissioner Breen said that they [three individuals mentioned above] have all received what the present members received.

Acting Chairman Kuziak said he would call Fran Rothenberg.

MOTION: Commissioner Breen made a **MOTION, seconded by Alternate Bolduc to TABLE the issue until the next meeting regarding changing the bi-laws to read certificate of mailing.**

VOTE: In Favor: Unanimous

ADJOURNMENT:

MOTION: Acting Chairman Kuziak a **MOTION, seconded by all the members present, to ADJOURN the meeting at 8:30 P.M.**

VOTE: In Favor: Unanimous

Respectfully submitted,

I certify that these Minutes were accepted
on _____.

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Lynda D. Karas, Recording Secretary

Helene Shay, Secretary
Zoning Board of Appeals