TOWN OF WINDSOR
ZONING BOARD OF APPEALS

Regular Meeting
April 19, 2006

Unapproved

PRESENT: Chairwoman Fran Rothenberg, Secretary Helene Shay, Commissioners, Max Kuziak, Alternates Roseanne Lombardo, Loretta Raney and Zoning Enforcement Officer Wayne McKinney

EXCUSED ABSENCE: Commissioners Joseph Breen, Thomas Ferranti, Alternate Milo Peck III

The Meeting was called to order at 7:03 P.M. by Chairwoman Fran Rothenberg in the Town Hall Ludlow Room, 275 Broad Street, Windsor, Connecticut.

ESTABLISHMENT OF QUORUM:

A quorum was established as three Regular Members and two Alternate Members were present.

CALL TO ORDER – PUBLIC HEARINGS:

LEGAL NOTICE:
The Legal Notice submitted by Helene H. Shay, Secretary, which appeared in the Hartford Courant on April 7 & 13th, 2006 was read by Commissioner Raney and included the following variance applications to be heard:

#06-03 Wyndemere Subdivision, NE corner of East Granby and Rainbow Rds. – Appeal of the Zoning Officer Decision under CT General Statute Section 13.7.1 – Sign location

#06-04 1363 Poquonock Ave - Appeal of the Zoning Officer Decision under Windsor Zoning Ordinance 15.6.1 – Procedures for single family conversion

#06-05 Withdrawn

#06-06 720 Bloomfield Ave. – Section 4.1.3 Front Yard Variance

#06-07 909 Stone Rd. – Section 10.5.5 – Commercial Kennel Location

#06-08 863 Marshall Phelps Rd. – Section 3.4.2F (2b) Parking Standards

PROCEDURES:

Commissioner Lombardo read the procedures for presentation of an application and appeal. She then queried the audience for any questions regarding the procedures which were read. Hearing no comments, Commissioner Lombardo declared the hearings proceed.

PUBLIC HEARINGS /Application #06-03 Wyndemere Subdivision, NE corner of East Granby and Rainbow Rds. – Appeal of the Zoning Officer Decision under Windsor Zoning Ordinance Section 13.7.1 – Sign location

DISCUSSION:
Attorney Dennis McCormack spoke on behalf of Rayco Development, LLC
Wayne McKinney, ZEO made his statement. The sign location was Approved by TP&Z and signed off by all staff as part of the site plan approval and recorded in the Town Clerk Office. Mario Zavarella, former Town Planner and himself as Chief Building Official both signed off on the sign permit. According to Section 13.7.1 of the town zoning regulations, no sign shall be permitted in the public right of way unless the location is approved by the director of public safety, Mr. Souza, the Town Manager, or other relevant authority. Under Chapter 15 of the Town of Windsor Code of Ordinances, Division 3, work performed within the town's right of way. Section 15-47 promulgation of rules and regulations. After extensive research, Mr. McKinney has found that there has not been a sign in the Town of Windsor that has been approved by the town manager. There are many signs currently located in the town right of way and no precedent set.

Attorney McCormack introduced pictures of the decorative stone fences and signs in question. These signs were part of the Special Use Application and shown on the map in the area they were erected. This project was reviewed by various town officials and signed off on. Special Use procedure was granted. Atty. McCormack introduced sign off procedures for the record as well as a letter dated Dec. 9, 2004 from Town Engineer highlighting his comment on the sub plate being used for the street name on the sign. This clearly indicates the sign was reviewed and permitted by the town. Rayco also applied for and received a sign permit for the signs. He feels that as the result of a complaint, the original map was not found initially, and the ZEO did write a letter indicating that they may be in violation. After facts came out he feels that they are not in violation, the key is that the relevant authority did sign off and the history of this town shows that the TP&Z is the relevant authority. The signage, lighting, roadway, drainage and relevant factors were extensively reviewed over the 7 month long process. Attorney McCormack requests that the original ZEO decision be overturned.

Mr. McKinney says that the location of the sign had some history. At one point the State was going to use this area a collector for Route 20. The state took a large corner of this property, when it reverted back to the town, the town did not put the lines back to where they originally were. As a result, there is a large set back, unusual for any area.

The town owns the property. A private citizen complained. The comments submitted by the Building Official say the original permit did not come in as a "Monument Sign" as it was constructed. (Permit was introduced) Description on the permit is a for a lighted entrance sign on both sides of the development entrance. It should have read installation of monument entrance sign. The building code is different for a monument sign. The description does not affect the sign there now other than that the application does not show what is actually there. A new permit is needed to reflect different sign.

Commissioner Kuziak interprets the regulation to mean that the relevant authority would be the Fire Chief, Police Chief, or anybody that is involved in Public Safety. To say that the TP&Z is the relevant authority is stretching.

Attorney McCormack said that as part of the design development team approval, all those persons including fire marshal, police officers, environmental health officer, Inland Wetlands, building official, zoning enforcement officer, public works; they all get the application and opportunity to review the application. Sign location was listed on the application and went through the proper channels. The Special Use application was approved with the sign shown to be in its current location by the TP&Z. In addition, a sign permit was also granted. A complaint about a light was made and that was found not to be worthy by the ZEO. Same individual came back and questioned "this particular section of the regulation." ZEO saw the subdivision application is the land records, and not the Special Use permit that showed the sign. This has been standard procedure for 25 years in this town. This is a personal vendetta by the complainant.

Commissioner Kuziak made the point that just because there were other signs in the right of way without Town Manager permission, it did not make it right. The regulation should be changed.

Mr. McKinney suggests that they reapply for a "monument sign" and he will ask the Town Manager to sign off on it.

Attorney McCormack introduced for the record the sign offs from all the different departments.

Angela Gegetsky, 549 Rainbow Rd. and Cheryl Gegetsky 559 Rainbow Rd. spoke against the sign. Complaint was that the lights shine into her home and bedrooms. Commissioner Rothenberg stated they must be powerful lights to deflect off the wall and shine so brightly into her home.

Ms. Gegetsky felt the sign was never explained to the area residents that she attended or watched on TV every meeting, and that the sign happened after the TP&Z meeting was passed.

She also complained that since it is on town property that she had concerns about town liability if someone were to be injured playing on the wall, falls off, or if a car hits it; who is liable because it is on town property.

Mr. McKinney explained that an alternate option would be a regular street sign and a street light.

Atty. McCormack rebutted that all the maps submitted at the Special Use hearings show the location of the signs.

#06-04 1363 Poquonock Ave - Appeal of the Zoning Office Decision under CT General Statute Section 15.6.1 – Procedures for single family conversion.

Wayne McKinney, ZEO states this property was originally a two family home converted several years ago to a single family. Since that time, the regulations do not allow 2 families to be outside of the

Windsor center district. He defers to Mr. Barz, Town Planner, comments. Section 2.3.4C of the zoning regulations state "Any structure in which a non-conforming use is superseded by a permitted use, shall there after conform to the requirements of the district in which such structure is located and the non-conforming use may not thereafter be resumed"

Jason Lafleur, 1363 Poquonock, stated that the property was present for sale by Pat Shooley, who Mr. Lafleur has done business with before refinancing his home in Suffield. Eight or nine years ago Mr. Shooley renovated the property as a two family, and moved in, renting the other half out. As his family grew he lived in the whole thing. For some reason, possibly tax purposes, he converted to one family. This was done before Mr. Lafleur tried to purchase the property. He had asked the assessor and was told it was being taxed as a two family. The house continues to this date to 2 kitchens, 2 stairwells, separate entrances, and different mechanicals. Mr. Shooley asked the building dept. if he could convert back to a two family and received a positive response that it could be converted back to a two family. The compliance variance changed in June 2005. Pat was in the building dept. in Oct. or Nov. Mr. Lafleur bought the property in Dec. 2005. In late January when Mr. Lafleur went to get a permit to put in 2 electric meters, this situation arose. Mr. Lafleur never knew it was not a legitimate 2 family property or he would not have considered buying the property.
Commissioner Kuziak asked if it was set up as a 2 family. Mr. Lafleur replied not entirely. There are 2 stair cases and an opening on the 1st and 2nd floor that were accessible. There were 2 kitchens, 3 bath, and 2 furnaces. Mr. Shooley, previous owner was the person who got the permit to convert to a one family. Mr. Shooley may not have known that he could not convert back to a 2 family as the regulation went into effect just last June 2005.

Commissioner Raney questioned Mr. Lafleur as to what kind of mortgage he had. As a 2 family it would be a different type of mortgage than the traditional mortgage. Mr. Lafleur replied he was unaware of the type of mortgage he had but that he did have it insured as a two family. He knew he had to close off the openings and change the electric meter to convert back to a two family. It was a two family for over 140 years. Commissioner Raney questioned further about the type of mortgage as there is a significant difference.

The description of the property should identify the type of property that was bought. It was identified as a single family.

Building Official McKinney showed a building permit was signed by Patrick Shooley, for removal of 2 electric meters and the installation of one meter for the conversion to a single family dated 6-8-98. Patrick Shooley said it was assessed as a two family. His letter to the commission indicates that he believes he spoke to Lori Hartman, Building Clerk, who called the assessor in his presence and asked the status of the property. She was told, and relayed to him that it was assessed as a legal two family. She did not look at the property file herself. After receiving this letter today, April 19, 2006, she called the assessors office again to verify the status. The new clerk in that office told her it was a one family. Ms. Hartmann went down to the assessor office and spoke to Bill Sandwell, the Assistant Assessor and explained what had occurred. He said it was certainly possible that wrong information may have been given. The language of the letter indicates an assessor card was looked at. The system in place today involves looking the property up on the computer screen. Ms. Hartmann was unaware

who she may have talked too previously as calling that office occurs routinely and she talks to many people.

Mr. Lafleur stated that there are two family homes surrounding his home. He understands that he is not in the Windsor Center district. His neighbors do not have an issue with his property being a two family. The house was known by the commissioners to be a two family and recognize all the improvements that have been made to the property. Mr. Lafleur believes Mr. Shooley had good intensions, and knows that ignorance is no excuse. However based on the response Mr. Shooley got from the building dept. and from visually looking at the property, it still seemed to be a two family.

He purchased the property in Dec. 2005. He said it was being taxed as of July 2005 as a two family house. Mr. Lafleur believes the Assessors office has caught up with the property and it is now being taxed as a one family. Multiple cards in the building file, that are very old, indicate a 2 family. We are unaware whether filed cards or just a computer system is used in the Assessors Office.

The Assessor receives copies of all building permits. There is a time gap between the time information is received in the building dept. and the Assessor updates his record. There are many, many transactions and can be a large time gap until the Assessor catches up with taxing sheds, pool, additions, etc. There is also the possibility of paper work slipping through the cracks.

Mr. McKinney says it is a legal single family. Records presented and Mr. Lafleur gave conflicting information. There have never been any complaints about the property.

A letter was received and is attached to this record in support of Mr. Lafleur's conversion to a 2 family from Ruth T. Welch, 1370 Poquonock. This was read into the record by Commissioner Lombardo.

PUBLIC HEARINGS /Application #06-06 720 Bloomfield Ave. – Section 4.1.3 Front Yard Variance
David Palmberg, Licensed Surveyor spoke on behalf of Allen Gaudet.
Mr. Palmberg outlined the need for a front yard variance due to the boundry of the wetlands and floodplain line. He requests of 20 yard front yard variance, unlike last year when they requested both a front and a side yard variance. The lot was existed in 1953 before the 100 year flood line was created in the 1970's. The property is located just east of Mill Brook. The home would be serviced by public water and sewer. His client is aware that this is the first step of several steps that need to be taken. They must be approved by the Inland Wetlands Commission and a CT DOT approval to change the guardrail. If Bloomfield Ave. were to be widened, there would still be 20.5 feet of driveway length to the road.

Ms. Marcia Wood, 740 Bloomfield Ave, spoke against the variance. Her concerns centered on the flooding and that the brook has changed course since the record rains this past October.

Mr. Nicholas Cecere, 714 Bloomfield Ave. spoke against the variance. He is next door and has maintained the property for 52 years. In his opinion the land is a swamp and can not be built on with out diverting water onto his property.

George Stanley, 701 Bloomfield Ave., spoke against the application. He is directly across the street from the property.

Daniel Briggs, 115 Trent, spoke against the application. He is the neighbor directly behind the applicant's. He is concerned that the home would direct water flow onto his property, making a current run off problem even worse.

PUBLIC HEARINGS /Application #06-07 909 Stone Rd. – Section 10.5.5 – Commercial Kennel Location

Laura M. Casinghino, 909 Stone Rd, daughter of the property owner has 4.2 acres and would like to put a kennel for approximately 10 dogs, maximum 14, on her property. The property is zoned AG. From the boundary line of her property to the boundary at 864 Stone Rd. that is zoned AA is only 172 ft. She will install an approved septic system for disposal of waste and soundproof to prevent any barking from traveling. Ms. Casinghino addressed concerns of hours of operation saying it would be approximately 7 am to 7 pm and that traffic would be minimal as it was not a "day care" bur rather extended care for a limited number of dogs.

Mr. Paul Kuratis, 873 Stone Rd, looked at the map and said he had no problems with the proposed kennel.

Letters of support and concern were entered into the record from Frank C. Yesavage, 916 Stone Rd. and from Debra & Robert Bologna, 933 Stone Rd.

PUBLIC HEARINGS /Application #06-08 863 Marshall Phelps Rd. – Section 3.4.2F (2b) Parking Standards
Mr. Bob Lawton, Vice President CBS Manufacturing and Timothy Mulcahy, Sales Engineer PDS Engineering request that a variance to allow parking determined by number of employees on the largest shift rather than square footage of the building. The business currently has 35 employees and 49 parking spaces. They propose to add a second level to the building and adding a second shift of only 5 employees. The proposed expansion of floor space places an unfair burden to create parking when none is needed. The existing fire lane would remain as it is.

CLOSE OF PUBLIC HEARINGS:

Commissioner Kuziak CLOSED the Public Hearing and requested a short recess

COMMENCE REGULAR BUSINESS MEETING/1.a cases heard during Public Hearing/Application #06-03 Wyndemere Subdivision, NE corner of East Granby and Rainbow Rds. – Appeal of the Zoning Officer Decision under CT General Statute Section 13.7.1 – Sign location

MOTION: On 06-03 – Wyndemere Subdivision – Commissioner Kuziak made the motion for purpose of discussion upholding the Zoning Officer's opinion on Wyndemere Subdivision, N/E corner of East Granby & Rainbow Roads – Appeal of Zoning Officer's Decision on CT General Statutes Section 13.1.7.1 sign location – Move for upholding the zoning official's decision.

Seconded by Secretary Shay.

DISCUSSION: Whether or not the sign is good or bad, or lighting is good or bad, that's all not relevant to our case. I will here subject to rule on the zoning officer's decision, and his decision is in line with the zoning regulations, plus the fact that the sign is not what the permit allowed. Therefore, I support his decision. I am moving to deny the appeal of Wyndemere Subdivision and upholding the decision of the zoning officer that Rayco Development makes a reapplication of a "monument" sign.

MOTION: Commissioner Kuziak made a motion, seconded by Secretary Shay, to uphold Appeal #06-03 Wyndemere Subdivision, NE corner of East Granby and Rainbow Rds. – Appeal of the Zoning Officer Decision under Windsor Zoning Ordinance Section 13.7.1 – Sign location

VOTE: **In Favor (of upholding the variance): 4 Against: 0 Abstain: 1**

COMMENCE REGULAR BUSINESS MEETING/1.b cases heard during Public Hearing/Application : 06-04 – 1363 Poquonock Avenue – Appeal of the zoning board decision - procedure for single family conversion.

MOTION: Secretary Shay: I move for purpose of discussion to uphold the zoning officer's decision under CT General Statute Section 15.6.1 for item #06-04, 1363 Poquonock Ave. procedure for single family conversion; seconded by Commissioner Kuziak,

DISCUSSION: Secretary Shay: I am going to have to vote against upholding the zoning enforcement officer's decision because in light of the fact that this was a two-family house, that it is in an area where there are two other two-family houses, and I must say that in almost 41 years that I have lived in Windsor, I have always noted that house and have always thought that it was a two-family house. If one person moved into the house and changed it to a single-family house to accommodate the size of the family, I still think that if it was originally a two-family house. It should go back to being a two-family house if someone has moved in and wants to use it as that. And then I am a little in flux about the fact that it was taxed as a two-family house but then flip-flopped to a single family house, so I am in favor of flipping it back to a two-family house.

Commissioner Kuziak: I kind of share your opinion, but think your opinion is more of a sentimental one than a legal one. The problem is that we pay people like our zoning enforcement office to uphold the law of the town. I will want to uphold this decision. I would much rather see this gentleman come back to us and get a new variance. I would certainly be in favor of that

Commissioner: I would like to accommodate this gentleman. I really would, but I think by doing this we set a precedent and that does not necessarily improve things. I think he got bamboozled and I think there is some ambiguity in the town's regard to how it all took place, but I think that in view of the fact that it is currently on record that it is a single family home, then it should not have been converted back to a two family home. That the proper procedure should be that we go by the rules. I would like to see it back as a two-family house. They did a fabulous job with it. It is a very attractive house. It

may require one more meeting, and paperwork filing, but I think it just should follow the rules. But I do think that the attorney didn't do justice to him.

Commissioner: In that regard though, I don't think he should have to pay the penalty for what appears to me to be problematic of the town's record keeping. There is no clear-cut picture when you look at this from the assessor's records and the other records that we have -- that what really happened as far as was it converted or was it not converted, and I think he was given this information. I don't think he should have to pay the penalty for errors made by the town government.

I would like to make an amendment to say that he comes and reapply for an application and not pay for the application fee.

ZEO McKinney: He would have to come to TP&Z now and apply for a Special Use. It has to go for a Special Use because of the changes in the regulations.

Commissioner: What can we do? ZEO: Nothing. Commissioner: Than, why are we hearing this application?

ZEO McKinney: So that you can uphold my decision. Because the point was made to me and I had to write the letter, and in the letter it gives the gentleman a right of appeal to the Zoning Board of Appeals.

Commissioner: No matter what we do, he still has to go to TP&Z.

Commissioner: So this is a no-win situation.

Commissioner: Who's going to make him go to the TP&Z? ZEO: Planning.

Commissioner: He has to if he wants to convert it back to a two-family.

MOTION: Secretary Shay made a motion and Commissioner Kuziak seconded to uphold the zoning officer's decision under CT General Statute Section 15.6.1 for item #06-04, 1363 Poquonock Ave. procedure for single family conversion.

Secretary Shay: I lived her for 41 years and watched that house always be a two-family house. I went past it and looked at it today and it improved 150% and it still looks like a two-family house. It has been in an area where there are two other two-family houses and therefore, I think it should continue to be a two-family house.

If we do not uphold the zoning enforcement officer's appeal, we are not upholding a correct ruling by the man this town pays to make those rules, and he did what was right. I don't think he cares one bit. Plus, I don't want to set a precedent because since I have been on this commission, I think we have upheld every appeal of the zoning officer when he was right. Therefore, I will vote to uphold the appeal.

Commissioner Lombardo: If we can't discuss this and come to a consensus, then there is no sense to be here if we are just going to rubber stamp everything everybody tells us to do.

Commissioner: I'm doing what is right by the law. I am not rubber stamping anything. If he was wrong, I would vote against him.

VOTE: In Favor: 4 Opposed: 1

Commissioner: My understanding is that the Planning & Zoning will hear all our discussion on this.

ZEO McKinney: Most assuredly.

Secretary Shay: I want to make sure it is understood that even though I vote to uphold, I am for giving the gentleman what he needs.

ZEO McKinney: Yes definitely.

COMMENCE REGULAR BUSINESS MEETING/1.c cases heard during Public Hearing/Application : #06-06 720 Bloomfield Ave. – Section 4.1.3 Front Yard Variance

MOTION: Motion was made by Secretary Shay and seconded by Commissioner Kuziak to approve a 19.5 foot front yard variance for 720 Bloomfield Rd.

DISCUSSION: Commissioners Kuziak and Lombardo felt the hardship that included the wetlands boundaries were a hardship and that the ZBA should allow the variance. If wetlands were a problem, they would be addressed by that commission during the construction application process. Commissioners Shay, Rothenberg, and Raney agreed that the possible expansion of the state highway (Bloomfield Ave.) was reason to deny the variance as 20 feet would be too close to the busy road.

VOTE: In Favor: 2 Against: 3

COMMENCE REGULAR BUSINESS MEETING/1.d cases heard during Public Hearing/Application : #06-07 909 Stone Rd. – Section 10.5.5 – Commercial Kennel Location

MOTION: Motion was made by Commissioner Lombardo and seconded by Commissioner Raney to approve a 330 ft. distance variance to allow the applicant to operate a commercial kennel.

DISCUSSION: There were no objections from any neighbors.

VOTE: In Favor: Unanimous

COMMENCE REGULAR BUSINESS MEETING/1.e cases heard during Public Hearing/Application : #06-08 863 Marshall Phelps Rd. – Section 3.4.2F (2b) Parking Standards

MOTION: Motion was made by Commissioner Shay and seconded by Commissioner Lombardo to approve a variance to Section 3.4.2F (2b) Parking Standards and allow parking to be determined by the largest employee shift.

DISCUSSION: There were no objections

VOTE: In Favor: Unanimous

COMMENCE REGULAR BUSINESS MEETING/2. New Business/a. New Business

None

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

There were no Communications from the Public.

COMMENCE REGULAR BUSINESS MEETING/2. New Business/c. Minutes Acceptance – Feb. 15, 2005

Minutes were tabled

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

There were no Communications from Board Members

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

There were no Communications from Staff Liaison.

ADJOURNMENT:

MOTION: Commissioner Lombardo made a motion, seconded by Commissioner Raney, to **ADJOURN the meeting at 9:45 PM**

VOTE: **In Favor:** **Unanimous**

Respectfully submitted,

I certify that these Minutes were accepted on _____.

_____
Lori Hartmann, Recording Secretary

_____
Helene Shay, Secretary
Zoning Board of Appeals