

March 23, 2011

**MINUTES: THE ZONING BOARD OF APPEALS**, Town of Hamden, will hold a Public Hearing and Regular Meeting on Thursday, March 17, 2011 at 7:00 p.m. in the 3<sup>rd</sup> Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. and the following items were reviewed:

***Commissioners in attendance:***

Jeff Vita, Chair  
Wayne Chorney  
Fran Nelson  
Elaine Dove, arrived at 7:02 p.m.  
Bill Reynolds

***Staff in attendance:***

Dan Kops, Assistant Town Planner  
Holly Masi, Zoning Enforcement Officer, arrived at 7:35p.m.  
Stacy Shellard, Commission Clerk  
Lisa Raccio, Stenographer

Mr. Vita called the meeting to order at 7:00 p.m. He reviewed the agenda and meeting procedures, and the panel introduced themselves.

Mr. Vita explained that since there were only four members of the Commission present, all four must vote in favor of an application for it to be approved. He added that if anyone wished to, they could have their application continued to the next meeting.

**A. Public Hearing**

- 1) **11-6415** 1729-1731 Dixwell Avenue, Requesting a variance of the following: Table 3.4 to allow lot coverage of 85 percent where a maximum of 80 percent is allowed for a mixed use building. T-4 Zone, Irfan Farid, Applicant

Mr. Irfan Farid, 70 Todd Street, Owner, addressed the Commission and reviewed the application. He explained that the length requirements for a handicapped ramp is why a variance is needed for the lot coverage.

Mr. Vita stated that Ms. Dove, Commissioner arrived at 7:02 p.m.

The Commission discussed with Mr. Kops, Assistant Town Planner the need for a handicapped ramp to require a variance. Mr. Kops explained that a handicapped ramp is exempt from certain zoning regulations when it is being constructed on a residential property but this property is in a commercial zone. Ms. Dove asked what the property had previously been used for and Mr. Kops replied a two family house. Mr. Irfan advised the Commission that he is proposing a mixed use with the first floor being used for a gift shop and the second floor will be residential.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the public hearing.

- 2) 11-6416** 80 Rolling Ridge Road, Requesting a variance of the following: Section 620.d to permit an accessory apartment placed 28 inches below grade where the requirement is one wall must open to grade. R-2 Zone, Anne Pasquale, Applicant

Mr. Jason Bernier, 174 Point Beach Drive, Unit 2, Milford, General Contractor, addressed the Commission and stated that the applicant's mother is in failing health and would be using the accessory apartment. The proposal includes a small bedroom, full bathroom and a small kitchen area. The house was built with a basement that is twenty eight inches below grade. Mr. Bernier reviewed the location of the windows that will be used and said that they will be 30'' x 52'' in size. The apartment would have a door that will open into an existing finished basement which has access into the garage and the stairs that go up to the main house. Mr. Bernier submitted pictures to the Commission. Exhibit 1 shows the grade of 28 inches and Exhibit 2 shows the placement of the windows as a means of egress.

Ms. Dove asked Mr. Kops why the regulations require a particular grade. Mr. Kops explained that the zoning regulation is for safety reasons. Ms. Dove asked if the request is for an accessory use apartment and Mr. Kops advised that the zoning regulations label it as an accessory use apartment.

Mr. Nelson asked where the oil tank will be located. Mr. Bernier said that a new oil tank will be located under the staircase with an access door. Mr. Nelson asked what the ceiling height would be. Mr. Bernier said that the ceiling is 7 feet ten inches.

Mr. Chorney asked if Mr. Bernier had spoken with the Building Department with regard to the boiler and he said yes. Mr. Chorney asked if the chimney shown near the garage is for a fireplace. Mr. Bernier said that there is a wood burning fireplace. Mr. Chorney asked if the Building Department had any concerns with the height of the windows. Mr. Bernier said that one option would be to put a step in front of a window as a means of egress and when you step out the window there is an eight inch drop to a flower bed.

Mr. Vita asked if a condition should be that no structure will be placed in front of the windows. Mr. Kops recommended that a condition of approval can be that the Fire Marshal must sign off on the Zoning Permit so that he can determine if the plans meet the proper codes. Mr. Chorney said that the door between the garage and apartment will have to be fire rated.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the public hearing.

- 3) 11-6417** 190 Pine Rock Avenue, Requesting variances of the following: Section 380.1, Table 3.5, to permit frontage build out of 60 percent where 80 percent is required. Section 652.3, Affordable Housing Requirement for a multi-unit housing which requires 20 percent of the units to satisfy the affordable housing requirements. M Zone  
Sound Development Group, LLC, Applicant

Mr. Bernard Pellegrino, Attorney, addressed the Commission and reviewed the application. He stated that the ZBA had approved a variance at the January 2011 meeting to allow the building to be used for student housing. The hardship for the frontage build out is because of the shape of the 400 square foot lot. The angle of the southwesterly corner of the site poses difficulty because of the short distance from the first unit to the driveway access.

Mr. Vita asked if the first parking space would encroach into the driveway and Mr. Pellegrino said yes. Mr. Pellegrino said that an “emergency only” access is being proposed which also reduces the amount of frontage. A minimum amount of distance is needed between the buildings for fire safety and any emergency vehicles to provide for the health, safety and welfare of the occupants, visitors and vehicles on the site.

Mr. Pellegrino then explained that the zoning regulations require that 20 percent of the units be affordable housing and that the 32 units will be occupied by 128 students. There is a need to provide housing for students that are attending Southern CT State University and this property abuts the University. Mr. Pellegrino stated that the requirement that 20 percent of the units must be affordable housing would pose a hardship because the proposed project is to meet the needs of students. The proposed layout is to accommodate a student’s lifestyles and if 6 or 7 units must be affordable housing the lifestyles of those occupants may not be compatible. Mr. Pellegrino advised the Commission that if the housing market were to change and 75 percent of the units were not occupied by students then the housing ratio for affordability would apply to the non-student units on site. He understands that the Town wants the affordable housing requirement to be met and his client would agree to this as a condition of approval.

Mr. Vita asked for verification from Mr. Pellegrino that if in the future 75 units are not student occupied then 20 percent of the non student units would become affordable housing and Mr. Pellegrino said yes.

Mr. Nelson said that the variance that had been granted was for student housing only, and not for mixed use of residents with families. He asked why students could not have affordable housing. Mr. Pellegrino said that the majority of students do not apply for housing using their income and it would not comply with the statute. Mr. Nelson said that the rent per person could be calculated where six or seven units could be low income housing and still meet the criteria. He feels there are many students who are struggling with the cost of attending college and affordable housing would be helpful. Mr. Pellegrino said that his client has done a market analysis for the site and it would be difficult to be in compliance. The Commission discussed with Mr. Pellegrino that the previous variance was approved for students only and if the market were to change and the units were to house non students the applicant would then have to apply for another variance. The Commission discussed the zoning regulation requirement for the frontage build out.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the public hearing.

- 4) 11-6418** 2361 Whitney Avenue (aka 2989 Dixwell Avenue), Requesting a variance of the following:  
Table 3.4 to permit frontage buildout of 45 percent where 80 percent is required for an existing structure, T-5 Zone, Hamden Realty Associates LP, Applicant

Mr. Brian Enright, Attorney, addressed the Commission and reviewed the application and the location of the building. He explained that the building is free standing from the other buildings on the lot.

Mr. Chorney asked if an easement will be needed for the access to and from the site. Mr. Enright explained that there is an existing easement and there will be an agreement with the new owner for sharing the maintenance of the area.

Ms. Dove asked what business is currently in the building. Mr. Enright explained that there are offices on both floors. The building is being sold and it will be used as medical offices. Mr. Enright said that a non-conformity will be created when the building is sold because the entire parcel has a forty nine percent build out.

Mr. Chorney asked if the Commission should see the easements and if there is a need for a long term parking agreement. Mr. Kops said that the applicant will need to submit an application to Planning & Zoning and the parking will need to comply with the zoning regulations.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the public hearing.

- 5) **11-6419** 1025 Dixwell Avenue, Requesting a variance of the following: Section 658.a to permit a place of worship on a lot that is 27,007 square feet where a minimum 40,000 square feet is required, T-4 Zone, Bishop Lethenial McClam, Applicant

Bishop Lethenial McClam, 64 Judwin Avenue, New Haven, addressed the Commission. He introduced Mr. Daryl McClam, 95 Dixwell Avenue, New Haven.

Mr. Daryl McClam addressed the Commission and reviewed the application. He stated that there is ample amount of parking, but the site does not have the required amount of square footage that is required by the zoning regulations for a place of worship. Mr. McClam said that the request is not due to a financial hardship. The location on Dixwell Avenue is  $\frac{1}{4}$  of a mile from New Haven and would allow people to have solice when they worship.

Mr. Francesco Suppa, 119 Scrub Oak Road, North Haven, addressed the Commission and reviewed the site and said that there is enough space for forty cars to park. He said that the applicant is renting the site and that the site will be used by less than twenty five people. Mr. Suppa explained that he did not submit a survey with the application because of the cost & that if the variance is granted, he will submit one with the Special Permit application.

Mr. Chorney is concerned that the majority of the site is currently used for heavy equipment. Mr. Suppa said that it is paving equipment for his company which will not be used when the applicant is there and the majority of it is stored inside. Mr. Suppa stated that if there is a need for additional parking he would be willing to add it. Mr. Chorney asked if it would be considered a brownfield site.

Ms. Holly Masi, Zoning Enforcement Officer, said she would call the DEP to see if it is a brownfield site. She explained that the applicant is requesting the variance because the Fire Marshal had reported a violation that resulted in an enforcement action. The applicant has been cooperative and he is trying to bring the site into compliance for a small congregation. He will be submitting a Special Permit & Site Plan application if the variance is approved.

Mr. Kops advised the Commission that he had attended a Planning workshop and had also spoken to Mr. Tim Lee, Assistant Town Attorney and the ZBA are obligated to grant the variance. Mr. Kops reviewed the Federal Act and State Statute because there is a federal act & state law which allows for a person(s) to exercise their religion. He stated that the zoning regulation, though unintentional, has a clause that penalizes a place of worship. Mr. Kops reviewed the zoning regulation and stated that it needs to be amended, but a variance is necessary until it is amended. Mr. Kops discussed with the Commission the requirements for parking that will be reviewed by the Planning & Zoning Commission.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the public hearing.

## **B. Regular Meeting**

### **a. Discussion and voting on Public Hearing items.**

**11-6415**

*Mr. Nelson made the motion to approve Application 11-6415 because of the handicapped accessibility required for the site and it is only a minor encroachment. Mr. Chorney seconded the motion. The motion passed unanimously.*

**11-6416**

*Mr. Nelson made the motion to approve Application 11-6416 with the condition: Subject to the approval of the Fire Marshal. Mr. Nelson seconded the motion. Ms Masi explained that a zoning permit issued for an accessory apartment must meet all the codes of the Fire Marshal, QVHD and the Building Department. Mr. Nelson stated that the hardship is the topography of the land. The motion passed unanimously.*

**11-6417**

*Mr. Chorney made the motion to approve Application 11-6417 with the condition: 1) Limit to student housing. Mr. Reynolds seconded the motion. Mr. Chorney said that the application for a variance is for 20 percent of the affordable housing requirement and if the approval is subject to student housing only it negates the requirement. The build out requirement is 80 percent but the shape of the parcel only allows for a 60 percent build out. Mr. Vita said that that the additional access way for safety purposes also causes a hardship. Mr. Nelson feels that affordable housing should also apply to students. The Commission discussed that if the applicant no longer is using for student housing the applicant would need to return to the ZBA for a variance. Mr. Chorney, Mr. Vita, Mr. Reynolds and Ms. Dove voted in favor of the motion. Mr. Nelson abstained. The motion passed 4-0-1*

**11-6418**

*Mr. Nelson made the motion approve Application 11-6418. Mr. Reynolds seconded the motion. Mr. Nelson stated that the hardship is the zoning regulation which requires an 80 percent build out on the property. Mr. Vita feels that the existing driveway for the underground utilities does not give the option to build out. The motion passed unanimously.*

**11-6419**

*Mr. Nelson made the motion to approve Application 11-6419. Mr. Chorney seconded the motion. Mr. Nelson said that the ZBA is federally mandated so that there is no discrimination. The place of worship does not need 40,000 square feet . The Commission discussed with Mr. Kops that a place of assembly versus a place of worship cannot be treated differently. The motion passed unanimously.*

**b. Approve Minutes of February 17, 2011**

*Mr. Nelson made the motion to approve the minutes of the February 17, 2011 meeting. Mr. Reynolds seconded the motion. Mr. Reynolds, Mr. Nelson, Mr. Chorney and Ms. Dove voted in favor of the motion. The motion passed.*

**c. Old Business**

There was none.

**d. New Business**

**Ms. Dove discussed with Mr. Kops a lot in Spring Glen that was reconfigured.**

Mr. Chorney asked Ms. Masi to do a site visit to 1025 Dixwell Avenue and determine what equipment and material is being stored on the premise. Ms. Masi said that a Special Permit & Site Plan will need to be approved. The applicant will need to have a survey of the property and he will need to show what the existing conditions are on the site. Ms. Masi discussed with the Commission the enforcement action that was taken.

e. **Adjournment**

*Mr. Nelson made a motion to adjourn. The motion was seconded by Mr. Reynolds. The motion passed unanimously.*

The meeting adjourned at 8:00 p.m.

**Submitted by:** \_\_\_\_\_  
**Stacy Shellard, Commission Clerk**