

July 24, 2014, revised 10/28/14 per Commission review at October 16, 2014 meeting

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, July 17, 2014 at 7:00 p.m. in the 3rd Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. with the following results:

Commissioners in attendance: Jeff Vita, Chair
Wayne Chorney
Fran Nelson
Elaine Dove
Suzanne Carroll, sitting for Kyle DeLucia

Staff in attendance: Dan Kops, Assistant Town Planner
Tim Lee, Assist Town Attorney
Holly Masi, Zoning Enforcement Officer
Stacy Shellard, Commission Clerk
Genevieve Bertolini, Stenographer

Mr. Vita called the meeting to order at 7:04 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

A. Public Hearing

1) **14-6523** 1732 Dixwell Ave, Requesting variances: Article III, Figure 3.6 & Table 3.4 to allow a structure of 56.1ft in height where only 35ft is allowed for telecommunications antennas and screening. Article III, Figure 3.6 & Table 3.4 to allow a structure of 61.1ft where only 35ft is allowed for telecommunications equipment/shelter. T-4 zone, Cellco Partnership d/b/a Verizon Wireless, Applicant,
Public Hearing continued from 6-17-14 meeting

Mr. Tim Lee, Assistant Town Attorney, stated that the application has appeared three times on the agenda and several of the Commissioners have not been in attendance at all three meetings. The members have an obligation to review the records of the previous meetings and state for the record that they have done so. Ms. Carroll stated that she has reviewed the minutes of the meeting at which she was not in attendance. Mr. Vita stated that he will read the minutes of the June 19, 2014 meeting before rendering a decision.

Mr. Thomas Cody, Attorney, addressed the Commission and stated that Options 1, 2 and 2a have been addressed and two additional options have been submitted. A power point presentation will be given and Mr. Cody submitted a packet of the presentation to the Commission. The packet is included in the plans submitted June 26, 2014.

Mr. Carlos Santori, Professional Engineer, addressed the Commission and gave the power point presentation. It included the five options, including photo simulations. Option 1 shows roof top shelter with slide mounted antennas close to the edge of the building. Option 2 pulled the antennas back from the edge of the roof with no screening. Option 2a pulled the antennas back from the edge of the roof but it includes screening. Mr. Santori

referred to the sectors as alpha, beta and gamma. They will remain the same position on the building. On the pulled back option the antennas will be 9 feet above the finished roof and the antennas close to the edge will be 8 feet above the finished roof. They height of the antennas is based on Verizon's need to provide service from this site. The penthouse and chimney include antennas owned by Sprint and Clear Wire. The location of the antennas height is also to avoid interference from the other carriers. Option 3 took the alpha sector and moved it towards front of the building on Dixwell Avenue so that the alpha and beta sector are together and the gamma sector remained the same. The generator for all the options will now be behind the existing penthouse. Option 3a is the same as Option 3 with screening added. The top of the antennas will be 9 feet high and the screening will be 10 feet high. Mr. Santori reviewed the elevations of the antennas and the screening for all the options. He also reviewed the street views.

The Commissioners, Planning Staff and the applicant's representatives had a lengthy discussion with regard to the application and the street views. Also, discussed was the need for the additional antennas to service the demand for increased technology.

Mr. Christopher DeFeo, Building Owner, addressed the Commission and stated that he was involved in the process of determining if his location was suitable to meet the wireless carrier's needs for the additional technology. He noted that once a carrier determines that a site will meet their needs other carriers tend to look at the site to place their antennas. Mr. DeFeo explained that the lease agreement addresses the colors allowed for screening and antennas so that it will blend in with the building. The carriers are not allowed to make any changes without the landlord's approval. Ms. Dove asked how many buildings Mr. DeFeo owns that have the same type of technology and if they are located in Hamden. Mr. DeFeo stated that he has several in Westchester, New York, but does not have any others in Hamden.

Mr. Jay Latorri, Radio Frequency Engineer, addressed the Commission. Mr. Chorney asked why a secondary location cannot be used to cover other needed areas. Mr. Latorri stated that Verizon Wireless looks at different locations to meet the growing capacity needs. When this location was selected two major factors were the capacity demands on the surrounding sites in the greater Hamden area and what the current coverage is where there are capacity demands. Mr. Latorri noted that the reason for the Dixwell Avenue location is that their current technology for service in and around the Dixwell Avenue is not meeting the Verizon Wireless internal standards for strength and quality of the signal. Other sites have exhausted their capacity and it is becoming difficult to meet the growing demand.

The Verizon representatives and the Commission further discussed the proposed location and the need for the variance request.

Mr. Vita asked for Comments in favor and against the application. There were none.

Mr. Vita closed the Public Hearing.

2) 14-6529 43 Seminole Ave, Requesting variance: Section 670.2.f., to allow parking in the required front yard up to 0 feet from the front property boundary and in the required side yard up to 1ft from the side property boundary. R-4 zone, Justin McWaid, Applicant

Mr. Justin McWaid, owner, addressed the Commission and reviewed the variance request. He reviewed the view from the street if the parking area was to be place in the front yard. The proposed location is to the left of the driveway. Mr. McWaid is willing to place a hedge between his property and the abutting property.

Mr. Vita asked if the proposed driveway is paved. Mr. McWaid stated that he could do a gravel driveway with a wood perimeter. He explained that he needs one parking space for each student. There are two existing spaces and he needs to add an additional two spaces. Mr. Vita asked if Mr. McWaid lives in the home. Mr. McWaid replied that when he purchased the home he was planning to live in the house. However, he is now working in New

Jersey and has decided to rent it out. Mr. McWaid reviewed the site and showed a picture of the house using his cell phone.

Mr. Chorney asked how deep the proposed driveway will be. Mr. McWaid said it is the minimum allowed because he does not want more than necessary. Mr. Nelson asked how far back the street is set from the road. Mr. McWaid replied approximately 40 feet. Mr. Chorney said that the first 10 feet from the street cannot be included for parking. Ms. Masi reviewed the site plan that was submitted with the pending zoning permit. The Planning Staff and the Commission discussed with Mr. McWaid the zoning requirements for a driveway and the need for a property survey. Ms. Masi explained that she has a current enforcement action because students were living in the home and there is no student housing permit. The Commission discussed with Mr. McWaid the requirements of a student housing permit. As the driveway exists, two students could live on the site. They discussed different options and locations for a driveway, and the need for a more detailed plot plan. Mr. Chorney stated that there is a need for a survey. Mr. McWaid feels that what he submitted with the pending zoning permit is accurate.

Mr. Vita asked for comments in favor of the application. There were none.

Mr. Vita asked for comments against the application:

Mr. Joseph O'Leary, 26 Sleeping Giant Drive, addressed the Commission and stated that his home abuts Mr. McWaid's home to the north of the property. He noted that since January students have been living in the house and he asked if a student housing permit was approved. Regardless of where the additional parking is located it is for students who have already been living in the house. Mr. O'Leary stated that work has already been done for the driveway. It has been laid out and earth removed. Two large 4x4's have been put down. A 70 year old tree was removed without a survey. Mr. O'Leary stated that the previous neighbor had stated the owner before them planted the tree. When a survey was done the tree was determined to be on Mr. O'Leary's property. No agreement had been reached to remove the tree.

Ms. Holly Masi, Zoning Enforcement Officer, explained that a Notice of Violation was issued. The applicant responded by submitting a zoning permit application which is pending, and is before the ZBA to meet the parking regulations. Other agencies will need to inspect the house. No enforcement action can be taken while the applications are pending.

Mr. Dave Kelley, 26 Seminole Avenue, addressed the Commission and stated that Mr. McWaid never gives the same story to the neighbors as to what he is doing. The application states that the neighbors have agreed to the variance request and this is not true. The site plan included is only a sketch and does not include the correct measurements. Mr. Kelley feels that a survey needs to be done because what has been excavated he believes goes on to Mr. O'Leary's property. A survey would give the exact property lines. The alternative that Mr. McWaid is providing would be hideous in a residential neighborhood. Mr. Kelley stated that there is additional noise and traffic in the neighborhood. A steady deterioration of the neighborhood would occur with the removal of trees and the additional paving. Mr. Kelley is concerned with the property values in the neighborhood.

Mr. Kelley submitted two letters from residents who could not attend the meeting.

Mr. Chorney reviewed the letters from Ms. Jessica Sutula and Mr. Ken Dubin, both of whom are against the application request.

Mr. Stephen Brody, 40 Seminole Avenue, addressed the Commission and read from the following statement(submitted to clerk):

Dear Board of Appeals,

Thank you for the opportunity to allow me to speak on this variance request. I have been a Hamden and Seminole Avenue resident for over 16 years. The street and neighborhood has been a tranquil and single resident residential setting for over 65 years. I believe the proposed use for the property will

change the spirit of the neighborhood, infringe on neighboring property owner's rights and enjoyment of their own land. Without detailed drawings, plans, and elevations showing an accurate scale drawing plan of the proposed driveway construction – I anticipate this plan impacting the O'Leary family with drainage issues (possible flooding), erosion, noise, and appearance. According to the Town of Hamden Application process – a survey of the subject premises prepared, signed, and sealed by a licensed land surveyor must be included in the variance request. As a tax paying Hamden resident and Seminole Avenue resident – I was completely offended by Mr. Justin McWaid's blatant threat for Alternate Option # 2 – which clearly states that this location would result in a negative impact to the surrounding properties.

Item # 1:

Based on Justin McWaid's application – he has not clearly identified the property's special circumstances and unnecessary hardship that would otherwise result if a variance were not approved. Based on his application the variance is completely related to financial gain (rental property for Quinnipiac students). The variance is specific to obtaining a rental permit from the Town of Hamden (670.2F). There are no special property circumstances (rocks, streams, etc) that would support this variance application.

Item # 2:

Based on Justin McWaid's application – he has not shown that the restrictions of the existing driveway unreasonably deny a permitted use of his property.

Item # 3:

Based on Justin McWaid's application – he has not demonstrated that unless granted a variance, he will have no viable use for his property.

Mr. Scott Cumpstone, 43 Seminole Avenue, addressed the Commission and read the following statement (submitted to clerk):

My name is Scott Cumpstone. First off, let me thank the Zoning Board of Appeals for this opportunity to express our feelings concerning the variance request at 43 Seminole Avenue. I'm speaking on behalf of myself and my wife Angie. We own the house at 35 Seminole Avenue and have lived there since 1997.

We're opposed to Mr. McWaid's variance request at 43 Seminole Avenue. It is our opinion that the proposed request would significantly change the street on which we reside. There are nine homes on our street. None of which have driveways wider than the width of one car entering from the street. All of the driveways on our street exceed the required distance between driveway and its neighboring property. The requested variance would change this.

Mr. McWaid's proposal of doubling the driveway's width to the left of the current driveway (plan A) would be radically altering the layout of our street. None of my neighbors own more than two cars, some have only one. A property on our small street where four cars will be parked will be inconsistent with the other residences. While an argument that doubling the driveway would alleviate cars parking on the street can be made. We can say however in the months between March and May of this year we've seen four cars parked on the property. Two in the driveway and two on the front yard. And yet we'd come home from work on a Thursday only to find three more cars parked in front of our house. These vehicles would remain the entire weekend and still be there when we left for work Monday morning. And that's on the rare occasion when four cars were parked on the property. On any given day during those months there could be as many as eight or nine cars parked in the street. At times, we've noticed the renters of Mr. McWaid's property wouldn't use the driveway at all. Choosing instead to park in front of my home as well as my neighbor's homes. When I asked one of Mr. McWaid's renters the reasoning behind this his reply was that he didn't want to get blocked in by a roommate.

Our other concern about putting a driveway on the edge of the property in question is the hazard it creates as the bordering property to the left is downhill. Mr. McWaid has already removed a large tree and cleared an area that served as a barrier between the two properties. A slight error navigating the proposed driveway could result in a vehicle traveling downhill potentially entering the home next door of Mr. O’Leary. Therefore, we disagree with Mr. McWaid’s statement made within his variance application that “(plan A) is reasonable with no adverse impact on the surrounding properties.” We also do not agree with the statement made by Mr. McWaid in his variance request stating that (plan A) was “As discussed and agreed on with the abutting neighbors.” I can speak for myself and my wife that this never happened.

I can say, that we do agree with Mr. McWaid on one point. The alternative option (plan B) as he calls it and as stated in his application, would be to tear up the front yard and in his words “would result in a negative impact on the surrounding properties.” His words. We take this as a threat from Mr. McWaid, who has never actually resided at the property, saying if he can’t obtain the variance to put the driveway to left he will purposely, again, in his own words, he has clearly stated (plan B) would “be an eyesore for neighbors.” This statement alone displays the selfishness and a total disregard for the residents of Seminole Avenue.

For reasons stated, my wife and I are urging you to deny Mr. McWaid’s variance request for the property at 43 Seminole Avenue. Again, thank you for this opportunity.

Mr. McWaid stated that the tree removed was close to the property line and was dead and hanging over the driveway and causing mold on his house. He apologized for not speaking with his neighbor. Mr. McWaid said that he has no ill intention but felt the tree was a danger to the exiting driveway. He noted that he had spoken with his neighbors. The proposed driveway is the best location. Mr. McWaid understands he will need a survey.

Mr. Cumpstone asked Mr. McWaid if he had lived in the house. Mr. McWaid replied that he lived there for a short time.

Mr. McWaid asked how to pursue additional parking if the variance request is denied. Ms. Masi told him to give her a call to set up a meeting to discuss the options.

Mr. Vita closed the Public Hearing.

3) 14-6530 2361 Whitney Ave, Requesting variances:

Proposed Lot 4, Section 310, Table 3.4, to allow a frontage build-out of 44.7% where a minimum of 80% is required; Section 320, Table 3.4, to allow total impervious surface coverage of 89% where only a maximum of 80% is permitted; Proposed Lot 5, Section 310, Table 3.4 to allow a frontage build-out of 77% where a minimum of 80% is required; Section 320, Table 3.4, to allow 60.9% building coverage where only 60% is permitted; Section 320, Table 3.4, to allow total impervious surface coverage of 96.1% where a maximum of 80% is permitted; Proposed Lot 6, Section 320, Table 3.4, to allow total impervious surface coverage of 80.1% where only 80% is permitted; T-5 zone, Hamden Realty Ass. LP, Applicant

Mr. Brian Enright, Attorney, addressed the Commission and reviewed the variance request. The request is similar request to split Dr. Kim’s office. The request will take lots 4, 5 and 6 which have existing businesses and create independent and separate lots.

Mr. Nelson asked if the lots are existing or separate. Mr. Enright stated that as the separate buildings currently sit they are located on one parcel. He explained that if the variance request is approved they will go before the Planning & Zoning Commission with a re-subdivision application to make individual lots with the respective buildings.

The Commission discussed their concerns about the parking lot that currently exists with the Planning Staff and Mr. Enright. An existing parking easement and a maintenance agreement is on the land records.

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

Mr. Vita closed the Public Hearing

4) 14-6531 1732 Dixwell Ave, Requesting variance: Article III, Figure 3.6 & Table 3.4, to allow a structure of 74ft where only 35ft is allowed for a telecommunications facility; T-4 zone, New Cingular Wireless PCS, LLC(AT&T), Applicant

Mr. Adam Braillard, Smart Link, LLC, addressed the Commission and reviewed the variance request. This application is similar to Verizon's application. The antennas will be installed on the penthouse. This will allow the optimal height and stay clear of other carriers. The penthouse measures approximately 63 feet high and the maximum height for the new antennas will be 74 feet high. The existing antennas on the chimney of the building are 65 feet 6 inches. The maximum of the existing structure to the top of the antennas is 9 ½ feet. The remaining equipment conforms to the telecommunications zoning regulations. There will 12 panel antennas in clusters of 3 arrays of 4 antennas. Each will be placed in a triangle array. The coaxial cables will be run through the building to the basement where the radio room will be housed. Two air conditioning conductors will be installed in the rear of the building next to a generator plug. In the event of an emergency, generators will be brought onto the site. Remote radio heads will be installed behind the antennas. The remote radio heads may be installed lower on the penthouse wall because the preliminary structural analysis received notes that the penthouse is structurally capable for the antennas, but the remote radio heads should be installed on the penthouse wall. More structural due diligence is needed to confirm that the proposal as proposed is structurally feasible. Mr. Braillard said a question was raised as to why the proposed plans do not show screening. The reason for this is because the existing antennas on the building are not screened, and if screening is added it will require upgrades to the structure.

Mr. Vita asked what the penthouse is used for. Mr. Braillard stated it houses an elevator and he reviewed the structure materials.

Mr. Braillard submitted and reviewed photo simulations with and without screening. He submitted and reviewed the screening material that would be used.

Mr. Chorney asked if the screening is put up will they need to alter the mechanicals.

Mr. Neil Coon, AT&T, addressed the Commission and reviewed how the antennas will be amount and reinforced to hold the stealthing.

Mr. Braillard said that AT&T performed radio frequency tests within the Town to determine the existing gap in reliable service coverage and capacity. He submitted radio frequency propagation maps which are a review of the existing and proposed coverage. Mr. Nelson asked if the proposed antennas are installed will they provide better coverage.

Mr. Radu Alecsndru, AT&T, addressed the Commission and reviewed the distance of coverage that will be achieved with the proposed antennas.

Mr. Braillard stated that if approved a condition of approval would require due diligence to determine and confirm that the proposed antennas can be built as proposed. The proposed request is the optimal height for the antennas. They worked with the landlord to make sure that they would not interfere with the other carriers. The location is optimal for the coverage and capacity needed.

Mr. Alecsndru explained that the location was chosen to get the most out of the building without a need for additional sites in Hamden. It provides the most coverage within the gaps. It would be difficult to place the antennas on the roof because of the other carrier's equipment that is already in place.

Ms. Dove asked why other sites cannot be chosen. Mr. Alecsndru stated that the building is central to the gap in coverage.

The Commission further discussed with Mr. Alecsandru, Mr. Coon and Mr. Braillard, the proposed location and antennas necessary to provide the needed coverage. Also, discussed were the FCC requirements to achieve the necessary service transmissions.

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

Mr. Vita closed the Public Hearing.

5) 14-6532 3594 Whitney Avenue, Requesting variances: Section 310.1.d, to permit the building facade to be parallel to the principal street only: Section 300, Figure 3.5 and Table 3.4 to permit a percentage build-out of 18.7% where 40% is required, due to wetlands and unbuildable areas. T3.5 zone, RJT Medical LLC, Applicant

Mr. Robert Henry, Owner, addressed the Commission and reviewed the site as it currently exists. He would like to develop the site to expand for additional space. Mr. Henry stated that the hardship is the wetlands and placing the building perpendicular to the street.

Mr. Nelson stated that West Todd Street is to be moved because of a condition of approval for a previous application. He feels that this may impact the parking for this site. Mr. Henry said that as the lot exists it should not be affected. Mr. Nelson discussed his concerns with Mr. Kops regarding the previous application and the work that has not been completed.

Mr. Matt Ducsay, Professional Engineer, addressed the Commission and said the submitted plans are the existing conditions on the site. If there were to be a curb cut on West Todd Street would only require a slight modification to the proposed plan. It would not affect the parking or setbacks. Mr. Nelson is concerned that the applicant may have purchased property that does not belong to them.

The Commission discussed with Mr. Ducsay and the Planning Staff their concerns for the approval of 20 & 36 West Todd Street and because the work was not completed if the bond will be called.

Mr. Ducsay stated that there is approximately 590 feet of frontage, and 350 feet is encumbered by wetlands and the Mill River. The 40 percent buildout requirement cannot be achieved because of the wetlands and the shape of the wetlands.

Mr. Kops said that the proposed application is similar to other requests that have come before the Commission. He reviewed the previous applications and zoning regulations. Mr. Kops reviewed the site and stated that there is a true hardship because of the wetlands and the shape of the lot and the angle of West Todd Street.

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

6) 14-6533 130 Lincoln St, Requesting variance: Section 220, Table 2.3 to allow a 9.2ft side yard where 12ft is required: R-4 zone, Lauren Doring, Applicant

Ms. Lauren Doring, addressed the Commission and reviewed the variance request. She stated that the houses in her neighborhood are small capes and a dormer would not change the footprint of the house. The hardship is that there is no other way to gain extra living space in the house.

Mr. Nelson asked if the dormer will go straight up and be set in. Ms. Doringer replied yes. Mr. Chorney asked if the dormer will stay within the existing footprint of the house and Ms. Doringer replied yes. Ms. Masi explained that the variance request is modest and will not have much impact.

Mr. Vita asked for comments for and against the application. There was none.

B. Regular Meeting

a. Discussion and voting on Public Hearing items.

14-6523

Mr. Nelson made the motion to approve option 3. Mr. Chorney seconded the motion. Mr. Nelson stated that the applicant has come back before the Commission three times and has reduced the amount the amount of coverage and visibility of the antennas. Mr. Vita stated that he has reviewed the minutes of June 19, 2014. Mr. Nelson stated that option 3 consolidates two out of the three antennas in the front corner and one to the south side of the property. There is no screening, so visibility is as small as can be on the building. The problem is not the coverage but the need for technology to transmit data. Mr. Nelson feels this is the least objectionable option. Ms. Dove does not understand is why the application cannot be denied without prejudice and have them come back with another option. AT&T also has issues. Mr. Nelson said that AT&T is a separate application and Verizon has reduced the coverage. Ms. Dove is concerned with how the antennas will look and if the last applicant requesting antennas will be stuck with putting up screening. The Commission and the Planning Staff further discussed the issues of the variance request, the hardship and future applications. *The motion passed unanimously.*

14-6529

Mr. Nelson made the motion to deny Application 14-6529. Mr. Chorney seconded the motion. Mr. Nelson stated that the applicant has created his own hardship. *The motion passed unanimously.*

14-6530

Mr. Nelson made the motion to approve Application 14-6530. Mr. Vita seconded the motion. Mr. Nelson stated that the applicant has shown there is sufficient parking. The applicant is parceling out each building to have its own lot. Mr. Vita said that it is one large lot that is being split up. There is plenty of parking and the buildings already exist. The Commission further discussed the variance request and the issues of parking. *Mr. Vita, Mr. Nelson, Ms. Dove and Ms. Carroll voted in favor of the motion. Mr. Chorney abstained. Therefore, the motion passed 4-0-1.*

14-6531

Mr. Nelson made the motion to approve Application 14-6531. Mr. Chorney seconded the motion for discussion purposes. Mr. Nelson stated that the proposed design has the least impact on the building. It is uniformed with the penthouse and goes straight up so it will be hidden. It will have the least impact on the building. The Commission discussed with the Planning Staff screening vs. no screening. *Mr. Nelson amended the motion to state that the application is approved using Photo 1, picture 3, with or without screening (use Sheet 4 or Sheet 3). Mr. Vita, Mr. Chorney, Ms. Carroll and Mr. Nelson voted in favor of the motion. Ms. Dove voted against the motion. Therefore, the motion passed 4-1-0.*

14-6532

Mr. Nelson made the motion to approve Application 14-6532. Mr. Chorney seconded the motion. Mr. Nelson stated that the hardship is the property is a corner lot with wetlands and a stream located on it, and to build-out as required by the Zoning Regulations would be impossible. *The motion passed unanimously.*

14-6533

Mr. Nelson made the motion to approve Application 14-6533. Mr. Chorney seconded the motion. Mr. Nelson stated that the dormer will be smaller than the footprint of the house and is going up. It will not increase the square footage of the house. *The motion passed unanimously.*

b. Approve Minutes of June 19, 2014

Tabled until the September 18, 2014 meeting

c. Old Business

There was none

d. New Business

There was none

e. Adjournment

Mr. Nelson made the motion to adjourn. Mr. Chorney seconded the motion. Therefore, the motion passed unanimously.

The meeting adjourned at 10:07 p.m.

Submitted by: _____
Stacy Shellard, Clerk of the Commission