

**PLANNING AND ZONING COMMISSION
REGULAR MEETING – MINUTES
NOVEMBER 13, 2013 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

PRESENT: Chairman James Steadman, David Krimmel, Gil Pratt, Ted Stoutenberg; Alternates Robert Moore, Martin Post, and Peter Ventre; First Selectman Dan Jerram; Land Use staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

ABSENT: Daniel LaPlante.

Chairman Jim Steadman called the meeting to order at 7:00PM. All regular members present were seated for the evening. Alternate Martin Post was seated for Daniel LaPlante, and Alternate Peter Ventre was seated for David Krimmel for agenda item 2B only. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. PUBLIC HEARINGS:

A. Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback.

Ms. Malanca read into the record the legal notice for this matter. Kenneth Roberge then addressed the Commission, submitting proof of notice of abutting neighbors. Ms. Malanca explained to the Commission that the revision of the Zoning Regulations effective January 1, 2012 had required generators and above-ground propane tanks to meet setback requirements for the zone in which they were located. This change had made it difficult for owners of nonconforming houses to obtain zoning permits for installation of generators and above-ground propane tanks, whereby a generator meeting setbacks might be several hundred feet away from the nonconforming house and its associated driveway. As a result of this, the Commission had then further amended the regulations to allow generators and above-ground propane tanks to be constructed within the setback area by special exception approval subject to the criteria listed in Section 8.5 of the Zoning Regulations.

Mr. Roberge explained that the house at 519 East Cotton Hill Road was pre-existing nonconforming in that it was located within the current 100-foot front yard setback area. Doris Berry, the owner of the property, was 94 years old and wished to have a generator and above-ground propane tank installed in order to enable her to remain comfortably in her home in the event of power outages. Mr. Roberge noted that there was a steep incline into a wooded area behind the house; if they were required to install the generator and tank outside the front-yard setback, clearing would be required and a 50-foot long pathway would have to be maintained even in bad weather in order to access the generator and tank to maintain and fill it. He stated that they proposed to install the generator and the propane tank at the northeast corner of the detached garage structure adjacent to the house. While the location selected would be within the front yard setback, it would be behind the garage; both structures would be compliant with side-yard and rear-yard setback requirements. Mr. Roberge stated that the site selected was level, close to the house, and within 30 feet of the driveway; however, with landscape plantings it would not be visible from the road. He noted that the neighbor across the street had a similar emergency generator that had been installed at the front of a nonconforming house prior to the change in the zoning regulations; no complaints had been received by the Land Use Office regarding this arrangement. Mr. Roberge then submitted a letter dated November 4, 2013 from Jan Lyon of 530 East Cotton Hill Road which expressed support for the application; the letter was then read into the record.

Mr. Stoutenberg observed that, while the generator and the propane tank were located within the front yard setback, they were in fact proposed for an area behind the house and garage. Mr. Pratt questioned the location of the propane tank, and Mr. Roberge stated that it would be located to the east of the generator. Mr. Pratt asked how far the tank would be from the adjoining property, noting a right of way to access a rear lot. Mr. Roberge explained that the adjoining house could not be seen from the location proposed for the propane tank. Ms. Malanca noted that the rear-yard setback requirement was 50 feet. Mr. Pratt asked how large a propane tank was proposed, and Mr. Roberge stated that he was not exactly sure; however, Ms. Lyon, the neighbor who had written the letter in support of the application, had a 100-gallon tank. The Commission briefly discussed the sizing of the propane tank, and Ms. Malanca explained the process by which propane tanks and emergency generators receive approval from the Building Inspector.

Hearing no further questions from the Commission, Mr. Steadman opened the floor to public comment; however, no one present expressed a desire to speak.

MOTION Mr. Stoutenberg, second Mr. Post, to close the public hearing in the matter of **Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback;** unanimously approved.

2. **PENDING APPLICATIONS:**

- A. **Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback.**

MOTION Mr. Stoutenberg, second Mr. Pratt, to approve the application in the matter of **Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback** as per all oral and written testimony; unanimously approved.

- B. **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (Public Hearing Closed 10/9/13).**

Mr. Steadman reiterated that he, Mr. Stoutenberg, Mr. Pratt, Mr. Post, and Mr. Ventre would be the commission members acting on this matter. Mr. Stoutenberg and Mr. Pratt declared for the record that they had listened to recording of the public hearing and had reviewed all the maps and files affiliated with this application.

Ms. Malanca reminded the Commission that they had requested an opinion from their attorney regarding whether the foreclosure and resultant tax sale had nullified the shared driveway deed restriction. She stated that she had heard back from Matt Willis in an email dated October 16, 2013 that the foreclosure and tax sale would not remove the shared driveway right. Mr. Willis also stated that as this lot was not created through the subdivision process, there was no subdivision protection in terms of the shared driveway only having to meet the regulations in effect at the time the lot was created; the shared driveway would have to conform to the current regulations governing shared driveways. Ms. Malanca noted that she had been able to locate the regulations in effect right before and right after this lot had been created; both had required shared driveways to be 18 feet wide.

Mr. Stoutenberg noted that, in reviewing the maps and plans and the testimony at the public hearing, the shared portion of the driveway was located on Mr. LaPlante's property; the work proposed to bring the driveway into compliance with current shared driveway regulations was also taking place entirely on Mr. LaPlante's property. Mr. Stoutenberg questioned whether the Commission had the right to tell Mr. LaPlante that he could not use a driveway located on his own property to access his own house.

MOTION Mr. Stoutenberg, second Mr. Post, to approve the application in the matter of **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway** as per all oral and written testimony including maps and plans prepared by David F. Whitney, Consulting Engineers, LLC entitled "Revised Site Plan for: Mr. Guy LaPlante, 81 Winchester Road, New Hartford, Connecticut" dated September 14, 2013 and revised through October 1, 2013; unanimously approved.

Mr. Post expressed the opinion that the Commission should have the flexibility to decrease the required shared driveway width if both property owners are amenable to the modification. Mr. Steadman and Mr. Stoutenberg concurred. Mr. Stoutenberg, noted that the Town road on which he lived was less than 18 feet wide, and it did not make sense to require a driveway to be this wide. Ms. Malanca stated that the requirement may have been created in order to allow ample room for emergency vehicles to access both lots; however, she offered to do research into the possibility of amending this section of the regulations.

3. **NEW APPLICATIONS:**

- A. **Heidi Gallagher, applicant/owner, 211 Holcomb Hill Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit.**

The Commission briefly reviewed the application.

MOTION Mr. Stoutenberg, second Mr. Post, to accept the application in the matter of **Heidi Gallagher, applicant/owner, 211 Holcomb Hill Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit** and to schedule a public hearing for December 11, 2013; unanimously approved.

4. APPROVAL OF MINUTES:

A. October 23, 2013 regular meeting.

MOTION Mr. Post, second Mr. Stoutenberg, to accept the minutes of the October 23, 2013 regular meetings as written; unanimously approved.

5. ZONING ENFORCEMENT OFFICER'S REPORT:

No business was discussed.

6. CORRESPONDENCE:

No business was discussed.

7. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

A. Informal Discussion with Martin Peabody regarding Conversion of Commercial Space to Residential Space at 4 Bridge Street.

Martin Peabody, owner of 4 Bridge Street, addressed the Commission and distributed copies of his proposed modifications to the space formerly used by Hoffman Hardware. Ms. Malanca explained that the property was located within the New Hartford Center Zone and had been approved for mixed use. She informed the Commission that the first floor, facing Bridge Street had been all retail; all residential uses were on the floors above. However, Mr. Peabody now wished to convert a significant portion of the first floor to residential use. Ms. Malanca explained that the zoning regulations stated that residential uses in a mixed use building could only be above the first floor. She noted that there was a basement area to this building which had a door out to the parking area behind the Town Hall. Ms. Malanca explained that she and Mr. Peabody were looking for clarification as to whether or not the Commission considered the basement area to be the first floor, in which case residential use would be permitted in the area formerly occupied by Hoffman Hardware, in accordance with the mixed use requirements stated in the regulations.

Mr. Peabody informed the Commission that he had hired a real estate agent to market the retail space; however, it appeared that no one was interested in renting a space this big in this economy. He explained that the retail space on the floor fronting on Bridge Street was 4000 square feet. Mr. Peabody stated that there had been interest in retail or office space approximately 1000-1400 square feet in size. He explained that he proposed to improve the façade of the building without changing the brickwork or the windows. The front area by the windows would remain retail and maintain the current appearance. However, a second door would be constructed leading down a hallway to the 2-3 apartments at the back of the space. He explained that the basement was a full basement with bathroom, and it was high enough that a person could walk through the entire area. Mr. Peabody stated that he was not planning any work in this area of the building.

Mr. Stoutenberg noted that if the ceiling of the basement area was at least 3 feet above grade on average, then the basement could be considered a story, and it would be possible to have residential use on the floor above in the area formerly occupied by Hoffman Hardware. Michael Bowe, Mr. Peabody's architect, addressed the Commission to state that he believed that the basement would meet the grade plan requirement Mr. Stoutenberg described. Mr. Stoutenberg questioned why residential had not been permitted on the first floor, and Ms. Malanca stated that she believed it was the Commission's intent to ensure the first floor area was used for commercial purposes in keeping with the purpose of mixed use. Mr. Peabody informed the Commission that he was leaning toward dividing the space into two commercial areas and 2 apartments; however, his plans also depicted one commercial area with three apartments. He noted that the Building Official and the Fire Marshal had already inspected the property and stated they did not anticipate any problems with his proposal.

P&Z – 111313 Minutes

First Selectman Dan Jerram then stated that, in his opinion, the retail space in this building was a challenge to keep occupied. He noted that this was the second largest retail space along Route 44 in New Hartford, and that it would be hard to fill 8000 square feet of retail space in such a small town. Mr. Post questioned whether Mr. Peabody had attempted to find a pharmacy to use the space. Mr. Peabody stated that he had contacted five different pharmacy chains, and he was told that the demographics did not support a pharmacy opening in this area. Mr. Jerram explained that businesses, when determining where to open a new location, often counted the number of homes within ½-mile of the location. Within ½-mile of this location was MDC land, Jones Mountain, and the Kingdom Game Club; therefore, there were not many homes in the area studied. Mr. Peabody explained that he had also tried to market the space for use as a gym or medical supply facility. Mr. Post asked whether Mr. Peabody envisioned upscale or lower priced apartments in this space. Mr. Peabody stated that he planned the apartments to be priced mid-range, but that they would generate interest as they were completely new.

Members of the Commission suggested that Mr. Peabody complete an application for a special exception, and as a part of that application be prepared to provide proof that the basement area met the requirements to be considered a story. Ms. Malanca then explained the special exception application process to Mr. Peabody. She then questioned whether the Commission thought they would like to have their planning consultant review the proposal. Members agreed to make this determination once an application had been received.

The Commission recessed from 8:01PM to 8:04PM.

B. Discussion of How to Regulated Medical Marijuana Dispensaries.

Ms. Malanca explained that she had been contacted by a businessman considering the possibility of opening a medical marijuana dispensary within the Town. She noted that this company would first have to apply for and be granted a license from the State of Connecticut; however, as a part of the process, a business has to be able to prove to the State that they can meet the zoning regulations for the municipality in which they plan to locate. As the Town's zoning regulations did not specifically address this issue, medical marijuana dispensaries were currently not permitted. Ms. Malanca stated that she had contacted the Town's planning consultant and the Commission's attorney on this matter, and there were several different ways in which the Commission could chose to regulate this use. She noted that the Town's planning consultant, Martin Connor, was also the City Planner for the City of Torrington; Torrington had implemented an overlay zone, thereby necessitating a zone change for any property where this use would be considered. Ms. Malanca explained that this provided the highest level of discretion to the Commission. She then briefly reviewed with the Commission the information submitted by their attorney, Mark Branse, on this subject.

Mr. Stoutenberg suggested that the Commission have a planning meeting with both Mr. Connor and Mr. Branse in order to determine how best to regulate medical marijuana dispensaries in the Town. Mr. Post questioned how pharmacies were handled according to the zoning regulations. Ms. Malanca explained that they were considered a retail use. Mr. Steadman questioned who would be permitted to dispense the marijuana, and Ms. Malanca stated that it would be an approved State dispensary. Jim Bento addressed the Commission to explain that he was considering establishing this business at 283 Main Street. They explained that the person dispensing the marijuana would have to be a registered pharmacist, and that the facility was required to be located at least 1000 feet from schools. Mr. Jerram also advised the Commission that such a dispensary also sells marijuana delivery devices. Mr. Krimmel stated that, in his opinion, such a use should have its own category on the use table and should not be combined with pharmacies on the table.

The Commission agreed to have Ms. Malanca arrange for both Mr. Branse and Mr. Connor to attend the December meeting to discuss this matter; if necessary, a special meeting could be scheduled.

C. 2014 Regular Meeting Schedule.

MOTION Mr. Stoutenberg, second Mr. Post, to adopt the 2014 Regular Meeting Schedule as written; unanimously approved.

MOTION Mr. Stoutenberg, second Mr. Steadman, to adjourn at 8:21PM; unanimously approved.

Respectfully submitted,
Stacey M. Sefcik
Recording Secretary