

**ZONING BOARD OF APPEALS
REGULAR MEETING, MONDAY, May 14, 2012
ALDERMANIC CHAMBERS 7:00 PM**

The Ansonia Zoning Board of Appeals held its organizational meeting on Monday, May 14, 2012. The meeting began at 7:00 p.m. and the following applications were acted upon.

Roll Call:

Peter Marcinko	Absent
Claudia Degnan	Present
Laura Gagnon	Present
Joseph Jaumann	Present
Nicolas Gentile III	Present
John Sanza	Absent
John Erlingheuser	Absent

4 Present, 3 Absent

A quorum was present.

Ms. Degnan declared the meeting open at 7:00. The meeting began with the pledge of allegiance.

Mr. Jauman made a motion to approve the February minutes. The motion was seconded by Mr. Gentile. All were in favor of the motion.

1. Richard Kastens and Bradlee Argraves, c/o Atty. Dominick Thomas 315 Main Street, Derby, for property located at 262 Wakelee Avenue, Ansonia, seeking relief from the Zoning Regulations, Section 316, Maximum residential density from 32, 670 square feet allowed to 16, 658 square feet and Section 310, Schedule B to allow 3 residential units on a single lot in a B zone, where only up to 2 family residential units are permitted on a single lot.

Attny. Thomas, 315 Main Street, Derby is present to represent the applicants. He presented some photographs of the property in question. He then stated that during the survey that "Dwight Street Extension" is not, in fact Dwight Street Extension. He further explained that it is just a driveway that is actually located on his client's property. He further stated that there are two driveways that are listed on the property.

He then stated that one of the buildings is a commercial building that was on before zoning in different incarnations. None of the former businesses were in compliance with the regulations regarding uses in B zones.

His clients recently purchased the property. There is a two family dwelling and this building on the property. The required amount of parking is available on the property. The variances that they are asking for are related to Section 310. which made about 70 % of the properties in B zones non-conforming.

What it did was to state in the B zone the maximum residential density is four per acre. That's one house for every 10, 100 plus square feet. When they put that in, it created the non-conformity. In this case, the property existed as a commercial property before zoning and the zoning regulations that have taken place on this small

property have rendered it unusable as a commercial piece of property. It is not big enough to be any commercial business. They are looking to take the property and turn it into an apartment. They would be removing the awning, removing the front windows and replacing them with typical front with windows and bringing the front door out so that it would have a residential look.

He further explained that there is plenty of parking at the location. He stated that the map that they provided shows six spaces. There will be two spaces for each of the residential units. He then stated that they actually have eight spaces available. He explained that in most residential zones they count tandem spaces in front of garages as spaces. The map shows that people can park inside the garage as well as just in front of the garage. He then stated that the garage that he is indicating does, in fact, belong to the house.

Mrs. Degnan questioned the driveway on the other side of the property. According to the map that was provided to the members, that driveway is a right of way for the other property owners. Attny. Thomas agreed that was accurate. He added that the driveway that is called Dwight Street extension services the properties that are off of it. The driveway on the other side services the access to the property located at 266 Wakelee Avenue. There are right of ways on each side of the building. No one can block the driveway in any way. He further explained that the parking that he mentioned earlier cannot and does not block the access of anyone.

He then stated that regardless of hardships, the bottom line is that the Supreme Court and Appellate Court and Fuller has stated that "the reduction of an existing non-conforming use or the change of one non-conforming use to another one that has less impact to the neighborhood may also constitute the grounds for granting a variance."

He then passed out copies of four court cases, (1) Supreme Court of Connecticut, Wanda Vine vs. ZBA of North Branford, (2) Supreme Court of Connecticut, Kenneth B. Adolphson vs. ZBA of Fairfield, (3) Appellate Court of Connecticut Vernon Stancuna vs. ZBA of Wallingford, and (4) Superior Court of Connecticut, George Mead vs. ZBA of Stamford. He also passed out a copy of the Land Use Law and Practice, which states, "A variance which will eliminate a nonconforming use is an independent ground for approving the variance." He then explained that the use here is a residential use vs. a commercial use. Zoning regulations that define what uses are permitted and zoning regulations that define what bulk standards are permitted.

He then stated that this property clearly is rezoning. The issue is that the setbacks are already pre-existing non-conformities. They are not changing the building at all other than to put in windows and bring the door to the front to make it more residential in appearance. In this case, they are not going to a less non-conforming use; they are going to a conforming use. The only non-conformities relate to the density of the use, which is a bulk standards requirement and the fact that this is a two family zone and there will be three houses on the property. He further stated that the bottom line is that that they will be going from a commercial use to a residential use, which is in conformity with the comprehensive plan because this is primarily a residential zone.

Mrs. Gagnon asked what the use was before zoning was changed? She was told that it had been a liquor store, a consignment shop... She then asked what it was immediately before zoning was changed. He stated that he didn't know what the use was at that time. He then stated that he believes that it was a liquor store for quite a long time. Mr. Tanner stated that in 1969 it was a liquor store. (Zoning went into effect in 1955.) Besides the changes to the building to make it more residential, his clients, because they are appearing before the board, are giving up their right under 8-2 of the Connecticut General Statutes to non-conforming use. (the following is Attny. Thomas' words verbatim) "In other words, they are abandoning it. In other words, they are willing to have a caveat to the land records indicating that it is abandoned. Which means that if this experiment fails, not that it's an experiment, but if they can't rent it residentially, it's too bad. In other words, they can't go back to a liquor store, they can't go back to anything because the one thing that happens when you, and I explained this to my clients, the one thing that happens when you go in for a, to remove or reduce a non-conformity, is you lose the right to that non-conformity. So, that non-conformity use would be abandoned or discontinued. If there's some documentation you would prefer, we'd be glad to record it on the land records."

Mrs. Gagnon asked what the dimensions are for the smaller building. Richard Kastens, 526 Howe Avenue,

Shelton, stated the building is approximately 35' deep and 22' wide.

Attny. Thomas then stated that obviously a variance requires four yes votes. Most applicants that he advises the preference is that with a four-member quorum if one member votes against the variance, you lose. The preference is that the applicant wait to have a five-member quorum. He has in the past requested that the board not vote until there are five members present so that the applicant can get a "fair shake."

Mrs. Degan stated that in the past they would give the applicant the opportunity to let the applicant wait until there was a five-member quorum. Unfortunately, the board has been told that a quorum is a quorum and they cannot continue that practice. Attny. Thomas stated that the board could continue the hearing until the next month's meeting so that at that meeting they have the opportunity to have a five-member quorum. He could then do a brief presentation at the next meeting and the board could then vote on the application or the applicant could withdraw the application at that time.

Mr. Jauman made a motion to continue the session until the next monthly meeting, (June 11th). The motion was seconded by Mr. Gentile. All were in favor of the motion.

Mr. Jauman made a motion to adjourn. The motion was seconded by Mr. Gentile. All were in favor of the motion.

The meeting ended at 7:45.

Respectfully submitted,

Carol Sardinha
Secretary