

ZONING BOARD OF APPEALS
July 1, 2013 Meeting Minutes

Board Members Present: Curtis Ruckey, Howard Aspinwall, Peter Lambert, Douglas Hamilton and Alternate Mike Russo

Town Staff Present: Patrice Carson, Town Planning Consultant

Chairman Ruckey called the meeting to order at 7:06 pm

Board roll call was taken.

MINUTES:

Chairman Ruckey referred to the June 3, 2013 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion. Mr. Lambert moved to accept the June 3, 2013 meeting minutes, as published. Mr. Hamilton seconded the motion. All were in favor. The vote was 4 – 0 (Mr. Russo was not present at this time), the motion was approved.

BILLS & CORRESPONDENCE:

None

OLD BUSINESS:

None

NEW BUSINESS:

Chairman Ruckey noted that there were only four Board members present that evening and, therefore, any decision in favor of the variance would have to be by a unanimous vote. He then asked the applicant if they wanted to move forward with the public hearing that evening or postpone it until the following month's meeting. Attorney Christopher Kervick stated that that was a real concern especially because he felt that Board Member Hamilton was going to find himself in a bit of an awkward position because he was related to one of the abutting property owners. He went on to say that if Mr. Hamilton were to recuse himself, they would be left without a quorum that evening.

Chairman Ruckey stated that he was unaware that there might be a potential conflict of interest. Mr. Hamilton then stated that he had read the information that Ms. Carson had forwarded to all of the Board members from the book "What's Legally Required" and that since he had no financial interest in the abutting property, he felt that he could be unbiased and remain seated on the Board for the public hearing.

Attorney Kervick pointed out that Mr. Hamilton was an heir of law to his brother, the owner of the abutting property, and to a certain extent did have a financial interest in the property. Mr. Hamilton then pointed out that his brother had five children and eight grandchildren, who would inherit his estate before he would.

Mr. Lambert received a telephone call at 7:10 pm from Alternate Board Member Russo stating that he was on his way to the meeting.

Ms. Carson pointed out that the decision was Mr. Hamilton's to make as to whether he would recuse himself or not. She went on to say that if he chose to remain seated that he could state his relationship to the abutting property owner and that he felt that he had no financial interest in the property and why and that that would be full disclosure to anyone who was wondering. She then reiterated that it was Mr. Hamilton's decision to make.

At 7:11 pm Chairman Ruckey moved to take a five to ten minute recess until Mr. Russo arrived. Mr. Lambert seconded the motion. All were in favor. The vote was 4 – 0, the motion was approved.

RECESS:

Mr. Russo arrived at the meeting at 7:19 pm and Chairman Ruckey called the meeting back to order. Mr. Ruckey then seated Mr. Russo on the Board for all of the evening's proceedings.

- a. Public hearing on Application #FY13-14-01, Owner/Applicant: M&L Development Corporation for a variance for the property located at 1 Rachel Road to reduce the minimum lot area of a single lot from 27,571 square feet to two lots of 13,960 square feet and 13,611 square feet, where 21,000 square feet is required; and to reduce the lot depth of those two parcels to 101.41 feet and 100.24 feet, respectively, where 175 feet is required.**

Attorney Christopher Kervic and Gary Merrigan were both present.

Attorney Kervick stated that the applicant was seeking a variance in the minimum lot area and the minimum lot depth. He then explained that the existing single lot was located on the corner of Rachel Road and South Elm Street with 271 feet of frontage on South Elm Street and 112.3 feet of frontage on Rachel Road. He went on to say that there was currently a dilapidated building and sheds on the lot that would all have to be removed. Attorney Kervic noted that the two homes to the north of the lot in question and all of the homes to the south were oriented with their fronts facing South Elm Street; the house on the lot in question was the only one facing Rachel Road.

Attorney Kervic stated that the property in question was located in a Residence A Zone and that the applicant was proposing to construct two new single family homes both facing South Elm Street. He then pointed out that that would be consistent with the other homes in the area. He went on to say that there were currently two curb cuts on South Elm Street serving the property, but that they were planning to reduce that to one curb cut with one driveway from Rachel Road. Attorney Kervic submitted two photos of the types of homes that the applicant was proposing to build (both would be raised ranches). He then noted that the homes were the exact footprint that was shown on the map that had been submitted with the application.

Attorney Kervic stated that the property in question did conform to the following:

- the use of the property;
- the frontage requirement;
- the lot coverage (20% maximum);
- the 40 foot front yard requirement;
- the 12 foot side yard requirement; and
- the 25 foot rear yard requirement.

Attorney Kervic noted that the lot line sat about 10 feet from the paved portion of the street. He went on to say that it was unclear if that was truly where the lot line was. He then explained that since 1919 the property had only had three different owners and that the 1919 deed showed a 125 foot depth from the eastern boundary. Attorney Kervic commented that it appeared as though the Town had taken 20 to 25 feet of property in front when they had put South Elm Street in. He then noted that there was never any conveyance or condemnation of that property; it just sort of happened with no record of it.

Attorney Kervic stated that the property did not conform to the 175 foot lot depth requirement. He then noted that the two proposed lots would be 101 and 102 feet deep. He went on to say that because of that shortage in depth, it would cause a shortage in the required 21,000 square feet of area. He then noted that proposed Lot A would be 13,960 square feet and proposed Lot B would be 13,611 square feet.

Attorney Kervic referred to Section 1301 of the Zoning Regulations and stated that the Zoning Board of Appeals had the authority to grant variances “in cases of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions as a result of which strict application would result in exceptional difficulty and unusual hardship that would deprive owners of the reasonable use of land or buildings involved.”

Attorney Kervic referred to Section 1301 again and stated that the Board must find the following five things in order to grant any variance:

- “1. That there are special circumstances or conditions, fully described in the findings of the Board, applying to the land or buildings for which the variance is sought and that these circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the zone in which they are situated and have not resulted from any act subsequent to the adoption of these Regulations whether in violation of the provisions hereof, or not.
2. That for reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of these Regulations would deprive the applicant of the reasonable use of such land or buildings, that the granting of the variance is necessary for the reasonable use of the land or buildings, and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
3. That the granting of the variance would not permit the property to be used for a purpose that is denied to the occupants of other properties in the same zoning district, except where denial would be confiscatory.
4. That the granting of a variance shall not, in effect, amount to a change of zone for the subject property.
5. That the granting of the variance is in harmony with the general purpose and intent of the Zoning Regulations and will not be detrimental to public health, safety, convenience, welfare and property value.”

Attorney Kervic noted that the current lot configuration had been in existence prior to the Zoning Regulations being adopted. He went on to say that if not for the shallow depth it would be reasonable to have two houses on the property in question. In addition, the two new structures would be more in conformity with the neighboring properties. Attorney Kervic then pointed out that the depth of the lot in question was the same as the depths of three of the abutting properties to the south. He also noted that two of those properties also had nonconforming areas as well.

Attorney Kervic commented, with regard to safety, that they would be going from two curb cuts to one, therefore enhancing the safety. He went on to say that two new homes would in no way negatively impact neighboring property values. He then submitted two more photographs showing that the property had been properly posted prior to the public hearing that evening. In addition, the applicant had properly submitted an application and paid the appropriate fee.

Attorney Kervic commented that hardship was the big issue for the Board to consider. He went on to say that their evidence showed that there was a hardship and that the hardship, depth, was specifically listed in the regulations. He then reiterated that the applicant's hardship was not self-created.

Attorney Kervic submitted three letters from abutting property owners. Chairman Ruckey asked the Recording Secretary to place the photographs and letters that were submitted by Attorney Kervic into the file to be made part of the official record. He went on to say that he had received another letter regarding the application and that he would read all of the letters into the record at the appropriate time later in the meeting.

Chairman Ruckey asked the Board members for any questions. They had none.

Chairman Ruckey commented that the thing that was disconcerting to him was that the property currently met Residence A zoning, but that the proposal not only would not meet Residence A requirements, but would also not even meet Residence AA or Residence B requirements. He then referred to one of Attorney Kervic's earlier statements to the effect of "the logical thing to do was to put two buildings on the lot". He went on to say that he did not necessarily agree, because currently the property with only one building on it met Residence A requirements. Chairman Ruckey commented that he understood that several other lots in the area may or may not be conforming and may or may not have variances placed on them (the Board did not have that information in front of them that evening). He then referred to Attorney Kervic's earlier statement to the effect of "it is reasonable that it would be in harmony with the current area" and commented that it would be hard to argue that it would be a disservice to the community or unharmonious with the area. Chairman Ruckey stated that the problem that he was having was doing the right thing for the community and allowing a builder to create two smaller lots for essentially a personal gain of selling two homes instead of one. He then questioned whether that would really be in harmony with what the community wanted for a Residential A property.

Attorney Kervic commented that he had tried to describe a framework for analyzing the regulations. He then explained that he had analyzed the regulation by removing the one impediment (the depth) and asked whether it would be reasonable to make two lots from the property in question, which it would be reasonable to do. The variance was needed only because of that one impediment. The discussion continued further and Attorney Kervic stated that cutting the property into two lots was something that the owner had the right to do.

Gary Merrigan of M&L Development, residing at 560 Halfway House Road, addressed the Board and noted that the Planning and Zoning Commission could approve the two proposed lots in a Residence B zone. He explained that they could approve a waiver allowing the lots at 90% of the required area. Mr. Merrigan stated that in his 30 years of developing in Windsor Locks he had never seen a Residence A lot like the one in question; it was truly not an Residence A area.

Mr. Merrigan explained that looking out of the front window of the existing home on the lot you could see a convenience store where people could purchase beer. He went on to say that

300 feet to the north was a 62 unit condominium complex with units selling at \$50,000 to \$80,000, across the street from that was a 186 unit apartment complex, and across the street from the property in question was a church. He then commented that he would not consider that a Residence A zone if he were looking to purchase a home. Mr. Merrigan reiterated that it was a very unique situation and that once the homes were built no one would ever know that they had been built under a variance.

Chairman Ruckey asked Ms. Carson if she was familiar with the allowance of 90% of the area under a waiver by the Planning and Zoning Commission as Mr. Merrigan had stated. Ms. Carson replied that she had seen it in the regulations, but that she was not familiar with how it worked.

Ms. Carson asked Mr. Merrigan to explain where the two existing curb cuts were located. Mr. Merrigan then did so on the map that had been submitted with the application.

Mr. Hamilton referred to the plot layout and noted that the width of the lot included the existing private driveway. Attorney Kervic explained that the lot line was on the north side of Rachel Road and that the deed was subject to a 25 foot right-of-way. Ms. Carson clarified that the first portion of Rachel Road belonged to the existing lot. Attorney Kervic stated that that was correct. He went on to say that even if they were to remove that 25 feet from their calculations, they would still have enough to create the two lots. Mr. Merrigan pointed out that Rachel Road was not a Town road. The discussion continued further and Ms. Carson reiterated that that 25 feet was under easement and, therefore, was unusable space. Mr. Merrigan noted that it served as the driveway for the lot.

Mr. Hamilton referred to Attorney Kervic's earlier comment that the necessary variance was due to the depth of the property and noted that they were also reducing the square footage of the property in order to build two homes. He went on to say that he saw that as a self-imposed hardship; if the applicant were to build one house on the lot in question the area would not be an issue. Attorney Kervic commented that that was not what the regulations meant by "self-imposed"; the regulations meant a condition being created after the adoption of the regulations. He then reiterated that as a property owner the applicant had the right to put another home there and that he had the frontage to do so. Attorney Kervic again pointed out that the area issue was triggered only by the depth.

Chairman Ruckey asked all individuals who wished to speak before the Board to step up to the microphone, and to state their name and address for the record.

Chairman Ruckey asked for any public input in opposition to the application.

Jim Szepanski of 61 South Elm Street addressed the Board and stated that he was a resident, a property owner and a taxpayer in Windsor Locks. He went on to say that he was in opposition to the application, although he was not personally against M&L Development.

Mr. Szepanski referred to Chapter 3, Section 301 of the Zoning Regulations and distributed copies of that section to the Board. He then read the following from Section 301:

“For the purposes of promoting the health, safety, morals and welfare of the community; of securing safety from panic, fire and other dangers; of lessening congestion in the streets; of providing adequate light and air; of avoiding undue concentration of population and preventing the overcrowding of land...”

He then referred to the districts listed in Section 301 and noted that Residence AA, A and B zones were listed, but that there were no Residence C or D zones. He went on to say that these districts had been established by the Planning and Zoning Commission of Windsor Locks with wisdom and purpose.

Mr. Szepanski referred to Section 403 of the Zoning Regulations and distributed copies of that section to the Board. He then read the following from Section 403:

“No lot shall have an area, width, or front, side, or rear yards less than given in the following table...”

He pointed out that there was no Residence C listed in the table. He reminded everyone that the property in question was located in a Residence A Zone and should comply with all of the requirements for that zone.

Mr. Szepanski referred to the map and stated that Parcel A was 13,960 square feet or .32 acres. He noted that Parcel A contained a right-of-way of 2,555 square feet or .05 acres that was not really usable other than for vehicle passage from property owners on Rachel Road. He then pointed out that everyone on Rachel Road used that right-of-way as well as their guests, garbage trucks, town plows, etc. Mr. Szepanski commented that it was easement; “you own it, but you don’t own it”. He went on to say that the right-of-way reduced the square footage of Parcel A to 11,405 square feet, where 21,000 square feet was required. He then noted that the applicant was asking for a 46% reduction.

Mr. Szepanski stated that Parcel B was 13,611 square feet or .31 acres and that the variance being requested was for a reduction of 35%. He then illustrated the reduction in lot size using pieces of cardboard cut to represent the size of the required lot size and the requested lot sizes.

Mr. Szepanski referred to Item 10, What is the Hardship Claim, on the application that had been submitted by the applicant and read the following:

“The exceptionally irregular (shallow) shape of the lot results in unusual hardship and would deprive owner of the reasonable use of the land.”

He commented that the sentence was a bit confusing, did the applicant mean that the lot was irregular or shallow or both. Mr. Szepanski stated that after hearing the applicant's presentation that evening he believed that the applicant actually meant "shallow" and not "irregular". He then referred to the definition of reasonable "that which is appropriate for a particular situation". He went on to say that he did not believe that the shallow lot deprived the owner of the reasonable use of the land; he was not deprived of anything. Mr. Szepanski stated that the current .63 acre lot had a house on it in a Residence A Zone. He went on to say that a reasonable use would be to repair, modify, expand the existing home or demolition it and rebuild a single family home since the lot was presently approved for a single family home.

Mr. Szepanski read the second sentence from Item 10 on the application as follows:

"These conditions are peculiar to this lot and do not generally apply to lots in this zone." He then pointed out that that was not true; 41 South Elm Street was a wide shallow lot; 71 South Elm Street was also a wide shallow lot; and his own property at 61 South Elm Street used to be 280 feet of frontage and only 180 feet deep (in 2010 he purchased 1.23 acres and, therefore increased their depth to 280 feet). Mr. Szepanski reiterated that the shallow depth was not peculiar to the lot in question and did apply to the zone in the neighborhood.

Mr. Szepanski read the third sentence from Item 10 on the application as follows:

"Strict application of regulations would deny owners use of the land." He went on to say that that statement was not true. The applicant could use the land as it was approved by building one single home. He noted that M&L Development Corporation had purchased the property in question with one house sitting on it in a Residential A Zone on .63 acres. Mr. Szepanski stated that it was not a blind purchase; the applicant was an experienced developer who knew the size of the lot, knew the zone it was in and knew that there was only one home on the property. He then commented that for the applicant to now claim a hardship was self-serving.

Mr. Szepanski read the last sentence from Item 10 on the Application as follows:

"Granting of variance will not permit property to be used for purpose not permitted in a Residence A Zone." He went on to say that the applicant's statement did not justify a hardship. He then noted that the Zoning Board of Appeals had no authority to change the use of the property in a particular zone; that would be a zone change which was the responsibility of the Planning and Zoning Commission.

Mr. Szepanski referred to the neighborhood in which the property was located, Rachel Road and South Elm Street. He then distributed a document that listed the nearby lots on Rachel Road and South Elm Street, the owner's name, the zoning district, and the lot size. Mr. Szepanski pointed out that there was no acreage in the seven listed on Rachel Road that was

less than .54 acres, yet the applicant was proposing .32 and .31 acres. He went on to say that using the property in question as it currently sat with one home on .63 acres would be in harmony with the rest of the neighborhood.

Mr. Szepanski referred to page two of his document which listed the neighboring properties on South Elm Street. He then noted that using the .63 acres of the property question as one lot would again be more in line with the other properties on South Elm Street. Mr. Szepanski commented that if they were to diminish the size of the lots in the neighborhood, they would diminish the value of the other homes.

Mr. Szepanski distributed a documented entitled "Property Owners Speak!" dated June 23, 2013 and read it as follows:

"We the property owners, as depicted by our signatures and addresses listed below, are in opposition to the Windsor Locks Zoning Board of Appeals granting a variance to M&L Development Corporation for property located at 1 Rachael Road, Windsor Locks, CT. We believe the hardship claimed in their application has no merit and is not in harmony with the general purpose of the zoning regulations. Further, in our opinion, it does not meet the criteria outlined in our Zoning Regulations under section 1301(B) entitled Variances.

We respectfully request the Zoning Board of Appeals deny approval of the variance."

He then noted that he had the original of the document containing the original signatures and would be happy to provide it to the Board for the record. He noted that the document contained the signatures of 26 property owners, representing 16 properties.

Attorney Kervic asked to examine the document, which he was then allowed to do.

Mr. Szepanski read the street numbers of the property owners who had signed the petition and were listed in his previously distributed document listing their lot sizes as follows:

"Rachael Road – 2, 4, 5, 7, 11 and 15"

"South Elm Street – 23, 31, 40, 41, 61, 78, 83, 91, 95 and 111"

He commented that the document illustrated that the approval of the variance was not desired by the neighborhood. He then pointed out that two of the three abutting property owners were opposed to the granting of the variance and had signed the petition.

Mr. Szepanski referred to Chapter 13 of the Zoning Regulations entitled Zoning Board of Appeals and highlighted the following from that chapter:

- Maintenance of property values: Mr. Szepanski commented that allowing two building lots with square footage below what was required in Residence A Zone or even what was required in a B Zone would have a negative impact on property values.

- Exceptionally shallow lots – Mr. Szepanski pointed out that it was not an exceptionally shallow lot and referred to Lots 41 and 71.
- Exceptional difficulty – Mr. Szepanski commented that there was no exceptional difficulty; the property owner could build one home as the lot was presently approved for.
- Unusual hardship – Mr. Szepanski stated that there was no hardship; the owner purchased the property with .63 acres and one home on it (it was not a blind purchase).
- Deprive owners of reasonable use – Mr. Szepanski commented that that was not true; reasonable use would be to build one home on the property.
- Special circumstances or conditions peculiar to the land – Mr. Szepanski stated that there were none; he then referred again to lots 41 and 71.
- Granting a variance shall not, in effect, amount to a change of zone for the subject property – Mr. Szepanski commented that he believed that the variance would amount to an undocumented zone change.
- Granting of the variance is in harmony with the general purpose and intent of the Zoning Regulations – Mr. Szepanski stated that it would not be in harmony.

Mr. Szepanski stated that the facts, information, data, rational and sound reasoning showed that no hardship existed that would justify the granting of a variance. He went on to say that the change was not desired by the neighborhood and would change the characteristics of the neighborhood, would affect property values and would contradict the language in Sections 301 and 403 of the Zoning Regulations.

Mr. Szepanski commented that although he was not an attorney, he had reviewed some case law. He then highlighted some of those case law decisions as follows:

- A variance cannot be granted as a special privilege.
- Power to vary zoning regulations must be sparingly exercised.
- It is not proper for the ZBA to grant a variance on an applicant's claim that a variance would improve the neighborhood without finding hardship.
- The desire to subdivide property into two lots is a voluntary hardship created by the applicant requiring denial of a variance.
- When a property owner's situation is self-created there is not sufficient reason to depart from zoning regulations.
- Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition.
- A mere economic hardship or a hardship that was self-created is not sufficient to justify a variance.
- The potential for financial gain is not sufficient reasoning for granting a variance.

Mr. Szepanski referred to Attorney Kervic's earlier comments about making the proposed houses conforming by not facing Rachael Road and then commented that he did not know that it was a requirement to have a corner house face the main street. He went on to say that the depth was not the only issue; the square footage was also an issue. He then referred to

Mr. Merrigan's earlier comment that it "was not an A area" and pointed out that Mr. Merrigan was not charged with determining what was or was not an A zone; the property was located in a Residential A zoning district. Mr. Szepanski questioned why M&L Development purchased the property if they felt that they would be denied reasonable use of the property.

Mr. Szepanski noted that a hardship must be demonstrated and supported by facts, but that he did not feel that the applicant had done so. He went on to say that one must not confuse the word "hardship" with the word "desire". Mr. Szepanski then respectfully requested that the Board deny the requested variance.

Chairman Ruckey asked for any further public input in opposition to the application.

Deb Barberi of 40 South Elm Street, directly across from the property in question, addressed the Board and stated that her parents had lived in the neighborhood for 60 years, she had grown up in the neighborhood and that she had heard some descriptions of the neighborhood earlier in the evening that had disturbed her. She went on to say that children could walk to school from this neighborhood, her family had walked to church together from this neighborhood, children could play freely in the neighborhood and walk to the neighborhood store. Ms. Barberi stated that it was an awesome neighborhood. She pointed out that they were in a Residential A zone and that these two proposed homes would be B zone homes. She went on to say that she found that to be disruptive to the neighborhood. She then stated that she was concerned about precedence, concerned about density in the area, and concerned about the shallowness of the lot and how it would affect the people who lived behind the two proposed homes. She noted that one house placed in a particular area might be a lot less disruptive than seeing the backs of two houses on very shallow lots. Ms. Barberi concluded by saying that she did feel that it would have a negative impact and that she was concerned about what it would lead to in the future and that she was against the granting of the variance.

Edward Sabotka of 23 South Elm Street addressed the Board and stated that he supported Mr. Szepanski and all of his comments. He then strongly urged the Board to deny the variance request.

Ronald Wozniak of 15 Rachael Road addressed the Board and stated that he was opposed to the requested variance. He went on to say that he had heard talk about the "good of the community" and pointed out that a petition is the community and the community was opposed to the granting of the variance.

Kim Quinlan of 11 Rachel Road addressed the Board and stated that she also owned 7 Rachel Road as well. She went on to say that she supported Mr. Szepanski and his comments and that she hoped that the Board would deny the requested variance. She commented that she

believed that it would look much nicer with one beautiful home on the property in question rather than two smaller homes crammed into one lot.

Mal Hamilton of 41 South Elm Street addressed the Board and stated that he had lived at 41 South Elm Street since 1968. He went on to say that he supported Mr. Szepanski's presentation that evening and that he hoped that the Board had taken what he had said to heart. He then urged the Board to deny the requested variance.

Chairman Ruckey asked for any further public input in opposition to the application. There was none.

Chairman Ruckey asked for any public input in favor of the application.

Lynn Moreno of 3 Rachel Road, the abutting property, addressed the Board and stated that she thought that the proposal was a wonderful idea. M&L Development was proposing to put up a beautiful fence and had been wonderful to deal with since they had purchased the property; asking her if there was anything that they could do to improve the look of the property. She went on to say that she did not have a problem with the requested variance or the applicant's proposal.

Chairman Ruckey read three letters that had been submitted to the Board with regard to the application in question.

Letter from Mickey Danyluk, 67 Oak Street, dated June 27, 2013:

"I wish to express my opinion regarding Application #FY13-14-01, scheduled to be heard on Monday, July 1, 2013.

It appears that the request for 2 building lots from the original parcel is more than significantly less than the required square footage of residential lots set forth in the zoning regulations and some 74 feet shorter than the required residential lot regulations. Approving this variance, I believe, will set a terrible precedence for the enforcement of residential lot zoning since these proposed new lots are so grossly undersized. Additionally, the applicant expresses no hardship in this matter. Therefore, I request that Application #FY13-14-01 be denied."

Letter from Abdul and Mary Ann Akil, 71 South Main Street:

"Abdul and Mary Ann Akil, owners of property at 71 South Elm Street have no objection to M&L Development application to divide the property at 1 Rachel Road into 2 lots as proposed. My lot has the same depth as these two lots and I believe that they are in harmony with the neighborhood."

Letter from Yogesh Patel, Hav-Mor Market, 24 South Elm Street dated June 28, 2013:

“I am owner of 24 South Elm Street, Windsor Locks, Connecticut and the operator of Hav-Mor Market within that property.

I have reviewed the Variance Plan submitted by M&L Development Corporation regarding a request for a variance to reduce the rear yard and lot area requirements so that two building lots may be created on the property known as 1 Rachel Road.

I am in favor of the application. I believe that the construction of two new homes facing South Elm Street will represent a significant improvement to the neighborhood.”

Letter from Lynn Moreno, 3 Rachel Road, dated June 10, 2013:

“I, Lynn Moreno, of 3 Rachel Road, Windsor Locks, CT have no objection to the proposed lot split at 1 Rachel Road, Windsor Locks, CT proposed by M&L Development Corporation of Windsor Locks, CT.”

Chairman Ruckey asked for any further public input in favor of the application.

Steve Wawruck of 18 Burnap Road addressed the Board and stated that he was in favor of the application. He pointed out that the property in question had been rundown for many years and that the proposal could only improve the neighborhood. He went on to say that the proposal would do no harm to the neighborhood, in fact there many other properties in Windsor Locks that had far less frontage with bigger homes on them. Mr. Wawruck commented that the proposal seemed to compliment the neighborhood very well and that he had never seen a development by Dan, Gary and his son (M&L Development) that was substandard. He then stated that he believed that the proposal would add value to the area and that he supported the variance application.

Chairman Ruckey asked for any further public input in favor of the application. There was none.

Mr. Szepanski then asked to make a comment with regard to Ms. Moreno’s earlier comments and the Chairman allowed him to do so. Mr. Szepanski then stated that he had spoken to Ms. Moreno about a week prior and that she was planning on selling her home and moving. He commented that that was why she did not oppose the granting of the requested variance. Chairman Ruckey stated that that really did not matter and had no merit. Mr. Szepanski then withdrew his comments.

Attorney Kervic referred to Mr. Szepanski's earlier comment, "one should comply with all requirements as laid out" and then asked that if that were the case then "what was the point in having a Zoning Board of Appeals". He went on to say that that was the function of the Board and that the town had anticipated that there would be occasions where fairness dictated that strict compliance not be required. If the town did not recognize that, then they would not have formed the Zoning Board of Appeals. Attorney Kervic then asked what they should do with all of the properties that did not comply; the Town had to do something. He went on to say that they needed to find creative ways to solve the lingering nonconforming issues in town.

Attorney Kervic commented that Mr. Szepanski had been very concerned with the language of the application. He then noted that that language had been pulled directly from the Regulations. He went on to say that Mr. Szepanski had also mentioned that the depth issue on his lot had been solved, because he had purchased some additional land in back of his original lot. Attorney Kervic pointed out that the depth issue had not been solved, because Mr. Szepanski had not merged his two lots. Chairman Ruckey pointed out that that was not before the Board that evening. Attorney Kervic commented that it was, because the Board had to weigh the credibility of all who came before them to give testimony. Ms. Carson then asked if the Town had an automatic merger provision. Attorney Kervic replied that there was no such clause; the two lots needed to be merged. Attorney Kervic pointed out that Mr. Szepanski received two separate tax bills. Ms. Carson commented that sometimes there was an automatic merger provision when someone owned property with a depth issue and then purchased property behind it. Chairman Ruckey again stated that that was not before the Board and, therefore, was irrelevant.

Attorney Kervic referred to Mr. Szepanski's earlier comment that "you must not change the use" and pointed out that the applicant was not proposing to change the use; residential use was required and that was what they were proposing. He then referred to the petition that had been submitted and noted that of the 26 signers, 13 lived on nonconforming lots. He then commented "what's good for the goose is good for the gander".

Attorney Kervic referred to Ms. Barberi's comments and asked what, if anything, in the application would change how she had described the neighborhood. He then pointed out that at least five of the existing lots in the neighborhood were already the size of Residential B zone lots or smaller.

Attorney Kervic referred to Mr. Hamilton's comments and stated that he did not hear anything said that illustrated that anything being requested would change anything; what would it do to hurt the neighborhood.

Chairman Ruckey closed the public comment portion of the public hearing.

Chairman Ruckey asked the Board members for any comments or questions. They had none.

Chairman Ruckey stated that he had looked at the petition that had been submitted and pointed out that there were 16 households represented on the petition. He went on to say that all 16 of those were actual neighbors either on Rachel Road or South Elm Street.

Chairman Ruckey asked the Board members for a motion regarding Application #FY13-14-01. Mr. Russo moved to approve Application #FY13-14-01, Owner/Applicant: M&L Development Corporation for a variance for the property located at 1 Rachel Road to reduce the minimum lot area of a single lot from 27,571 square feet to two lots of 13,960 square feet and 13,611 square feet, where 21,000 square feet is required; and to reduce the lot depth of those two parcels to 101.41 feet and 100.24 feet, respectively, where 175 feet is required. Mr. Lambert commented that he saw the proposed lots as conforming with what was already there; it would only improve the area. Chairman Ruckey clarified that Mr. Lambert was speaking to the hardship. Mr. Lambert stated that that was correct. Chairman Ruckey clarified that Mr. Lambert was agreeing with the hardship stated on the application, that it was an irregular lot in its shallowness. Mr. Lambert stated that that was correct and that that was what created the hardship. He then pointed out that the lots met all of the requirements except for the back lot. Mr. Lambert seconded the motion with his amendment. A discussion followed. The vote was 4 – 0 (Mr. Hamilton abstained), the motion was approved.

Ms. Carson referred to two things that were said that evening and noted that she was not a lawyer, but she was a certified planner. She went on to say that Attorney Kervic had stated that everyone was entitled to a free cut and then she explained that “free cut” meant that if someone had enough property to cut the property into two pieces once and that the third time that it was cut would make it a subdivision. She further explained that that individual only had the right to do so if they had the requirements to meet the zone without a variance. Ms. Carson explained that the reason that the “one cut” was put in place was because back when farmers owned a lot of property they wanted to be able to cut off a piece to give to a child or another family member without going through the cost of subdividing. She then stated that no one was entitled to the “one cut” ever. She reiterated that an individual could only get their “one cut” if they met the requirements; they could not come in for a variance and then come back and ask for their “one cut”.

Ms. Carson referred to reasonable use and stated that Attorney Kervic had twisted the Zoning Regulations around a lot that evening. She went on to say that the regulations and statutes required that the Board not leave somebody unreasonable use or no use of their property because the Board did not grant a variance. She then noted that the property in question that evening clearly had reasonable use; it had a single family home on it that could have been redone, taken

down and replaced, etc. Ms. Carson stated that the applicant completely had reasonable use of the property; reasonable use should not have even been an argument for him to use.

Chairman Ruckey stated that the reason that he made his decision to approve the variance was because it was not is disharmony with the area. Mr. Lambert agreed. Ms. Carson again reiterated that it came down to the hardship and that the applicant had no hardship; it was self-imposed.

Mr. Lambert moved to adjourn the meeting. Mr. Russo seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 9:07 pm

Respectfully submitted,

Diane Ferrari
Recording Secretaty

THIS IS A DRAFT

Please check the following month's meeting minutes for official approval of these minutes and any amendments or corrections that were made.