

SPECIAL TOWN COUNCIL MEETING

APRIL 18, 1989

7:00 p.m.

A special meeting of the Wallingford Town Council was held in Council Chambers and was called to order at 7:15 p.m. by Chairman Albert Killen. The purpose of the meeting was for discussions with the Planning & Zoning Commission and the Zoning Board of Appeals. Answering present to the roll called by Town Clerk Kathryn J. Wall were Council Members Adams, Bradley, Doherty, Papale, Parisi, Solinsky, Zandri and Killen. Also present were Adam Mantzaris, Town Attorney.

The Pledge of Allegiance was given to the flag.

Mr. Killen stated you're all aware there's an ongoing power struggle between the Planning & Zoning Commission and Zoning Board of Appeals. This includes some cases which are now in court and as long as they're in court we cannot refer to them. My understanding of the meeting this evening is so that we can clear the air and try to find out what the parameters are of each body's duties so that we don't trample on one another and we all aim in the same direction which is a better Wallingford.

Pat Piscitelli, Planning & Zoning Chairman, stated I'd like to present this meeting in the sense that this is not a power struggle. The reason why we have taken the ZBA to task is not because we're their taskmasters - we are not. The taskmasters are the State regulations, State statutes and the Wallingford regulations. We have to consider that every now and then a meeting such as this is necessary. In a period of 5 1/2 years we have had three formal meetings dealing with this type of situation. Planning & Zoning's position is we are charged with the zoning for the Town of Wallingford and we promulgate the regulations and then go to a public hearing. It is up to both of the commissions to uphold the regulations. We take the same oaths, to uphold the statutes and uphold the regulations for the Town of Wallingford. Their job is a little more difficult because they deal in some gray areas. But in the State statutes it is very explicit what the ZBA's role is. None of us like the idea that two Boards, who are working for the same team, have to go into the legal arena. But in certain cases, if they do not adhere to what the State statutes permit them to do, we must bring suit against them in an appeal. This kind of meeting will clear the air and set out what our responsibilities are and what their responsibilities are.

Raymond Havican, Zoning Board of Appeals Chairman, stated I object to what the P&Z Chairman has said because he has continually talked about upholding regulations. If you're going to uphold all the regulations, you can dissolve the Zoning Board of Appeals. The ZBA is an independent group who are there for the citizens of the Town who have a hardship on a land or regulation. This means we deal in gray areas. We deal with the little people who need a room because the family is growing or need a garage, etc. I have the utmost respect for the Commissioners and the Alternates on our Board. They are dedicated, sincere, hard workers and they have empathy. They try to understand from the citizens' viewpoint what they need and what can we do about it. I believe you

should do the best you can and then say the hell with it. Do your homework, stand up for what you think is right, and let the chips fall. There is a difference in the two Boards.

Mr. Killen stated from the opening statements it appears you're diametrically opposed to one another and I don't know what is expected from this Council. If philosophy is going to be the rule, I don't know what can be expected from here.

Mr. Piscitelli stated I'm going to read a statement that Mr. Killen made back in 1983. It was a question and answer with Tom Burns.

You said, I commend you sir on getting rid of a couple of phrases "hardship" and "financial hardship". I'm glad you put them to sleep. Another term is "highest and best use". Where does that fit in?

Attorney Burns replied, it doesn't have to. If someone comes in for a zone change or variance and brings in a couple of appraisers saying that the highest and best use of this property is for a shopping center, so what. You don't have to zone for the highest and best use.

Mr. Killen replied, thank you, you made my evening.

Mr. Havican stated Mr. Piscitelli is talking about the highest and best use of property. You cannot determine the highest and best use of any piece of property. We look at, in many cases, better use of the property. I want to make that point clear.

Mr. Piscitelli replied that has nothing to do with that. I'm just bringing a phrase in where some things were clarified back in 1983. Zoning regulations and land use is a very, very intricate and difficult subject. I'd like to have Linda Bush speak on the statutes and regulations.

Mr. Havican stated this is between the two chairmen. Why do we have to bring in someone else?

Mr. Killen stated we'll get back to that. Any questions from the Council?

Mr. Parisi stated I don't believe this situation is within the purview of the Council. I have one suggestion. I would think that whenever there are questions on the actions of either Board that perhaps a mediator should be used versus suing someone.

Mr. Piscitelli replied you have to take an appeal within a certain amount of time. You can have someone mediate, but a decision has already been made. We need to go into basics of what the statutes permit the P&Z and ZBA to do.

Mr. Killen stated Linda may come forward and quote chapter and verse, but if it's lost on the other Board, rightly or wrongly, you have gained nothing. I'm assuming both Boards are familiar with chapter and verse, that's their job. How

you apply them is up to you. It was my understanding that we wanted to find some middle road here. If each of you is going to say well we're right because of the way we interpret it, there's nothing we can do.

Mr. Havican stated I have a suggestion. I have been affiliated with the ZBA for about 10 years now. Over the years there has been this friction. One of the Town Planners would come into our meeting while we were discussing something and they would object. They would then come out with a zinger quoting some past history which would catch the Board off guard. We would sit there and say well we never expected that to happen, now we have to think again. This causes confusion. I suggest the Planning Department be staff people. Anyone in business knows a staff person has no line authority. They advise the line managers, in this case Pat and myself. I asked them if they would review the applications, like they always do, and send a letter to the ZBA as to what they object to and make recommendations. But the recommendations we have been getting are all negatives. A true staff person should give you both negative and positive and also offer alternatives. As long as they are going to come back black and white, and we deal with the gray areas, there is a difference in philosophy and we want to be respected for it.

Mr. Piscitelli replied there are certain regulations where there are no gray areas. Use variances are spelled out exactly the way they should be handled. It isn't a case of if you can't do this, you can do that. In many cases there are no options. The staff has a right to go in and advise the ZBA, particularly on certain applications. All you have to give a person is reasonable use of property, not highest. They infringe on the integrity of the regulations.

Mr. Killen stated from listening to you both, Pat is taking a firm stand on the written word and Ray is taking the position that they have discretion. Do you disagree with the fact that the ZBA does have some discretionary powers?

Mr. Piscitelli replied they do have discretionary powers, only in certain areas. That is spelled out in the statutes. It is very clear and explicit. In our decisions we are guided by our regulations. We have very limited discretionary powers.

Mr. Killen asked when you are unhappy with something that ZBA has done, do you confer with Linda and Tom, look over the guidelines as set out by Attorney Burns or ask the Town Attorney?

Mr. Piscitelli replied the staff has been in communication with the ZBA over the years. Recently we have sent letters. The staff has gone to their meetings on those agenda items that require an explanation of what the position is in the event they're going to approve it. The ZBA looks at a lot of applications so you're talking about a very small percentage of those that end up in court. These are the ones that we object to because it is in direct violation of the State statutes and regulations.

Ed Makepeace, Planning & Zoning, stated the members of P&Z believe our responsibilities are spelled out in the statutes in black and white as are the responsibilities of the ZBA. Our problem is that we feel that quite often they go beyond their responsibilities. If they grant a use variance, we feel

that is totally beyond their realm of responsibility. We have a professional staff who have more experience than any of us. When you have an expert you listen to them. We've given recommendations on the cases in court and unfortunately those recommendations of the Town's experts are not always adhered to. I think we need to take a few minutes and listen to Linda Bush, our Town expert, and have her tell us all what our responsibilities are.

Mr. Killen stated one side is accusing the other of ignoring the regulations. They are aware of the regulations. Reiterating the regulations will not make them change their mind, it will only make them get their backs up a little higher. What makes you think they're going to change their minds simply because you say we told you before and we're telling you again tonight that you're wrong.

Mr. Makepeace stated these meetings have generally included a discussion of the statutes. After we have had these meetings, there has been a consistent pattern of better relationships and more agreeable performance among the two Boards. History has shown that once the purposes of each Board have been discussed that we've had a reduced incidence of lawsuits and I think that's our goal.

Mr. Killen stated based on that I'll ask Linda to make her presentation and then we'll open it to questions from the members of both Boards and the Council.

Linda Bush stated first of all I want to say that I've had people come in my office and I've told them to apply to ZBA for a variance and they have asked if my office would support them. I don't think I've ever told an applicant that my office would support any variance for the plain reason that I would be ignoring the regulations. I'm paid to make certain that people comply with the regulations and I take that responsibility very seriously. I think it would be inappropriate for my office to start giving alternatives to variances and encouraging variances.

I'm going to discuss how we regulate land and why we regulate land. The only authority we have comes from the U.S. Constitution, the Connecticut Constitution and the Connecticut General Statutes. The municipality has no inherent powers. We only have the authority the State gives us through the General Statutes. The power to zone is an exercise of police power. You're telling someone what they can and cannot do on property they own. That power has to be exercised fairly and in conformance with the law. Section 8.2 of the Connecticut General Statutes, which is where we get our authority, states all such regulation shall be uniform for each class or kind of buildings, structures, or use of land throughout each district. That's why we have specific regulations in each zone.

One of the functions of a Planning & Zoning Commission is to plan. Wallingford's Plan of Development was adopted in 1984. This is the proposed land use map. The only way to implement a plan is to adopt regulations. In order to implement the plan that you want for the development of your community you adopt a zoning map. This map was adopted by the P&Z in 1986 to implement the plan. If you look at the objectives in the Plan of Development, you'll notice that all of the objectives, other than the downtown objectives, have been implemented. So the Planning & Zoning Commission does plan and they implement their plans through the zoning map and the zoning regulations.

The P&Z wears two hats: a legislative hat and an administrative hat. A legislative hat is a discretionary hat. By having public hearings on changing the regulations, map, etc. they are wearing their legislative hat. They don't wear the legislative hat very often because the law says a site plan may be modified or denied only if it fails to comply with requirements already set forth in the regulations. That's an administrative decision. There's no discretion involved. If it complies, they are required by state law to approve it. If people don't like things that are being approved, they should come to the P&Z and ask them to change the regulations. All property owners have a right to know what they can and cannot do on their property. That's why the regulation books and maps are available. That's why we try very hard to stick to the regulations for fairness. Discretion can lead to unfairness.

We also have case laws which are cases that have gone to court and have been determined. One of the laws under Powers and Duties of the Board of Appeals states, the Zoning Board of appeals shall have the following powers and duties: to hear and decide appeals where it is alleged that there is an error in any order, requirement, or decision made by the official charge. When my office sends a cease and desist to people, often times they appeal to the ZBA. That's what this section means.

The second one is to hear and decide all matters including special exceptions which it is required to pass by the specific terms of the zoning bylaw ordinance or regulation. The ZBA in Wallingford has been given certain powers to give special exceptions for satellite dishes, child day care homes, etc. Those authorities have been given to the ZBA.

The third states to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety and convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, providing that the zoning regulations may specify to the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed.

So even the responsibilities of the ZBA are written. If you have questions on what is meant by exceptional difficulty or unusual hardship, you go to case notes and you read what the courts have said.

Mr. Solinsky asked I went to one of those meetings several years ago and the attorneys said there are two variances given, one is legal and one is not?

Linda Bush stated very few variances that are granted would be upheld in a court of law.

Tom Flynn, Planning & Zoning, stated I believe it was 99% of the variance granted could be legally challenged and the appeal would win. The case law in

Connecticut is very clear as to what constitutes a valid, legal variance. The vast majority of variances granted are without legal basis under the statutes or the case laws.

Ed Makepeace asked Linda to explain the difference between a use variance and a hardship and why a use variance creates problems for us.

Linda Bush responded a use variance is a variance to permit a use in a zone where that use is not permitted, i.e., putting an auto repair business in a residential zone. To get a use variance you have to prove that you can't use your property for the uses permitted in that zone, so the only use that you can get a reasonable return from your property is a use that's not permitted. That creates problems because it disrupts the plan of development.

Mr. Makepeace asked who gives the ZBA the right to grant use variances?

Linda Bush replied under the statutes the P&Z can take that authority away from the ZBA. We never have, but we can. From 1984-1988 the ZBA granted one use variance. If we change the regulations, then the ZBA would not have that authority.

Phil Wright, Planning & Zoning, stated it's been suggested that instead of going to court that we contact the Town Attorney, seek an arbitrator, and try to come to some happy middle ground. I believe we have to appeal within a specified period of time. This is one of the reasons an arbitrator would be hard to work with.

Linda Bush replied in order to appeal any decision of the P&Z or ZBA you have to appeal within 15 days of the day the legal notice is in the newspaper. It would give you three weeks at the most. I doubt that three weeks is enough time to mediate the kind of dispute that we have.

Mr. Piscitelli stated the bigger question is once the decision is made how do we take and undo the decision. A decision is made to grant a variance and we do mediate and you say yes that probably is right. You've accepted and granted a variance. Now what do you do go back and say you can't have it?

Adam Mantzaris stated if it's a matter worthy of a court appeal then an appeal ought to be taken. You can attempt to mediate after the appeal is taken and if it's possible to reach a resolution then fine. But to protect the Town, the appeal ought to be filed.

Mr. Parisi stated I was hoping either Board would have a recommendation.

Mr. Makepeace stated I recommend that use variances not be granted unless they are discussed with P&Z to see if we have a real problem with them. That would alleviate a lot of problems if a discussion could take place in advance of voting.

Mr. Piscitelli stated Ray and I got together a couple of months ago and discussed several ways that we could have more communication and get more input from the staff. The files are there for their use and also the expertise of the

staff. I think if more of that is pursued, it will put them in a better position to make their job easier to understand some of these cases that come before them. That might be a start to solve some of these problems. But we have to preserve the integrity of the regulations.

Linda Bush stated the whole issue of land use regulations centers around fairness. By letting everyone in a particular zone know what the regulations are and knowing that everyone else in that particular zone are being treated exactly the same way, that's fairness. If you stick by the regulations, you treat the majority of the people the fairest.

Mr. Bradley stated I think this all boils down to the lack of or better communications. It would seem there is ample time to discuss these applications and iron out the problems before it becomes an issue.

Mr. Solinsky stated, I think the problem is two different groups have two different views and I don't know what you would do to remedy it.

Mr. Bradley replied you sit down and try to discuss it like we're doing tonight. I'm sure what is happening tonight isn't unique to the Town of Wallingford. I don't know what the other towns do. I would like the Boards to do a little research on how other towns handle this and come back with their findings and present it to the Council.

Mr. Solinsky stated I think arbitration is a good idea but there are going to be some areas that these two groups are not going to agree on.

Mr. Bradley stated hopefully we can minimize them.

Mr. Parisi stated by the very name of the Zoning Board of Appeals it's going to be obvious that if they function the way they're supposed to, it's an open line for disagreement. Their basic function is to overturn a decision based on certain criteria. At least tonight you're talking, and you have to hear some of what each other is saying. Hopefully there will be an attitudinal adjustment in some form.

Mr. Havican stated it is a matter of communications and attitude and sometimes it's very difficult to change things like this. Linda made the comment that if people don't like the planning and zoning regulations, they should come before P&Z to have the regulations changed. Well if that's what you're going to do, there's no need for the Zoning Board of Appeals. Also, Tom Flynn stated 99% of the decisions made by ZBA would be lost in court. It seems there is a feeling about our Board. They want to enforce the rules and regulations. I would like to invite the entire P&Z Board to attend one of our meetings and see what goes on and have a little feeling that sometimes it can't be all black and white. There are hardships in there that you have to try to understand and sometimes they are hard to explain. I think we should communicate and understand where they are coming from before we have the meetings. But that does not mean that because they say something we will follow it. We are an independent Board.

After a decision is made we have one week before it's published in the newspaper and then 15 days after that. P&Z knows our decision the next day. If they want to talk to us about it, then fine. I think the more we talk or socialize over a cup of coffee just to see where we're coming from, the better off we'll be.

At this point Mr. Killen asked each member of the Boards to stand up and introduce themselves.

Linda Bush stated I think it would be very helpful if members of the ZBA would come into the Planning & Zoning office or maybe as a group have a meeting with the staff. My office is where people come to ask questions. If they want to do something that doesn't comply with the regulations, we explain if it's totally outlandish. But even if it doesn't conform with the regulations we do mention variances, but we do give our opinion on those variances to the person asking the question. If the ZBA would like us to tell people different standards, we have to know what those standards are. At the moment my staff can't tell people what the standards are for variances granted by the ZBA because we don't know what they are. So maybe it would be helpful for the ZBA to come into the office as a group and go over what you would like us to tell people who have questions.

Mr. Doherty asked when people come in for a variance do you emphasize to them that even though this is your opinion that this thing will not fly at all, they have the right to get an application and get on to that agenda.

Linda Bush replied yes I always tell people that. My standard line is it will cost you \$40 and a night of your time.

Mr. Doherty stated it was my opinion that ZBA dealt with situations where there was a hardship on the land. I'm getting the impression from the cases we can't discuss here is there's also a family hardship that comes into play. Where does this come in and how much weight is given to it? Are we beginning to play social welfare worker or are we applying zoning laws?

Mr. Havican responded it's very difficult to set up rules and regulations because each case is different. You have to judge each case on itself. We are not a social welfare Board, but we do take into consideration if there is a hardship on the land and a family with a small house wants to add an extra bedroom because of growth in the family. We will consider that. We'll look at that. We have our input, we discuss it and when we make a decision, god help us we think it's the right decision to make.

I would not like Linda to become the judge and juror of anyone that comes in and I would like to do something as Dave pointed out. We should hold the door open for any citizen in this Town who feels they want to appeal something before the Board. They should be given the chance. Maybe instead of saying it's a night of your time and \$40, you might say the Town is certainly here to help you and if you would like to do that it does cost you \$40 and you will be down there for that evening. You know, a little sugar on top of it.

Linda Bush stated what I'm hearing is that instead of telling people they have to conform, we should tell them to go to the ZBA and they might not have to conform. I need some standards and guidelines. Why don't we set up a meeting?

Mr. Killen stated if there's going to be a dialog it should be between the two chairman of the Boards, not between you and Linda. The differences are going to have to be straightened out between the Boards.

Mr. Adams stated I think the saturation point has been reached. Two many times we've sat down here and prolonged discussion and destroyed all the good that's come out of it. People are willing to sit down and talk. There is a positive attitude to getting together and the more they are able to police the situation among themselves and come to a consensus of cooperation, that's what I'm concerned with. The two Boards have to get together and arrive at certain guidelines that they can agree upon, realize there are certain parameters they can agree with, give each the opportunity to give the pluses and minuses for why they took the stand that they took, etc. To go any further and keep discussing this right now is going to destroy all the good that's been done.

Mr. Piscitelli stated as far as the staff, it is their responsibility and obligation to the people of the Town of Wallingford that they point out what the regulations are. They don't tell them they can't go to this Board or that Board.

Mr. Killen stated I propose the Chairmen and Vice Chairmen of both Boards set up a meeting among themselves without Linda for the first meeting. Get yourselves established. Find out whether you're going to get along and be compatible with one another and take it from there. Have Linda and Tom in from that point on. This meeting was held to get you people together. If you want some help from us, I'm sure my fellow Council people would be glad to sit in on it. We realize there's a difference of opinion on how you're attacking it. That is best resolved among yourselves.

Mrs. Papale stated one good thing came out of this meeting. At least everyone got to know each other. I couldn't believe that people on one Board did not know the other Board. That alone is a step in the right direction. I just hope everyone will leave here with a different kind of attitude. I also hope things can get straightened out in the future before ever having to go to court.

Peter Frazino stated part of the blame is with the Council. When you appoint people to a Planning Commission and the ZBA, I think you should at least appoint someone who is qualified. There may be one or two on each Board that's qualified and it take's 5 years to learn the ropes. I would think when you people interview these people coming on these commissions and boards that you would look at their resume and ask them if they have any experience. If they went to seminars and read the zoning laws, they would be better qualified to make a good decision. You should not take the first person that comes along and put them on these Boards.

Mr. Killen replied it's the nicest thing in the world to be able to pick out three qualified people and this Council would love to put the most qualified people in Town on board. But if there are more qualified people out there, they are not the people that raise their hands and say we would like to serve. If someone is willing to serve, we have to acknowledge the fact that they are willing to serve and hope that they make good. Tonight isn't a matter of anyone

claiming someone else is completely unqualified, it's again a matter of philosophy and you're going to get that even among qualified people. We are doing our best.

Mr. Adams stated I think the idea of seminars or workshops should be made available through an outside agency, especially to the new members to make them feel more comfortable and know what's expected of them.

Motion to adjourn was made by Mr. Parisi, seconded by Mr. Adams.

Mr. Killen thanked everyone for attending.

VOTE: Unanimous ayes; motion duly carried.

Meeting adjourned at 9:10 p.m.

Meeting recorded and transcribed by:  
Katrina M. Manley, Council Secretary

Approved:

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Albert E. Killen, Chairman

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Date

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Kathryn J. Wall, Town Clerk

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Date