

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Planning & Zoning Commission

DATE: May 28, 1986

RE: Section 14.02A NON-CONFORMING LOTS OF RECORD

ISSUE:

Does the language of Section 14.02A, NON-CONFORMING LOTS OF RECORD, which provides that "In any zone permitting single family dwellings, a single family dwelling may be erected on a lot" preclude the construction of anything but a single family dwelling on said lot?

LAW:

Section 14.02A, NON-CONFORMING LOTS OF RECORD, provides that: "In any zone permitting single family dwellings, a single family dwelling may be erected on a lot notwithstanding other provisions of the Zoning Code. The lot must have fifty (50) feet of frontage. This provision applies even though the lot does not meet area or width requirements of the Zone. The lot must conform to all other yard and dimension requirements.

Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeal."

DISCUSSION:

The Zoning Code has been carefully reviewed regarding this question. Special attention has been given to all sections cited by Attorney Dowley in his brief.

Having done so, it is the opinion of the City Attorney that Section 14.02A applies to this case. That section is very specific. When a non-conforming lot is involved, and it exists in a zone which allows single family dwellings, ONLY a single family dwelling may be erected on that lot notwithstanding other provisions of the Zoning Code.

Because a non-conforming lot is involved, the limitation of new construction to a single family dwelling is reasonable under the facts of this case.

The applicant relies on Lawrence v. Zoning Board of Appeals, 158 Conn. 509, 511 (1969), which states that a zoning ordinance is a local legislative enactment and in its interpretation, the question is the intention of the legislative body as found from the words employed in the ordinance. The words are to be interpreted in their natural and usual meaning. Id. at 511.

Applicant also relies on J & M Realty Co. v. Board of Zoning Appeals 161 Conn. 229, 233 (1971). This case states "zoning regulations, being in derogation of common law property rights, should not be extended by construction beyond the fair import of their language and cannot be construed to include by implication that which is clearly within their express terms." From the language of this case, it is clear that zoning regulations should not be extended. Thus the applicant cannot read into an ordinance only applying to

one-family dwellings that two-family dwellings should also apply, because it is not expressly prohibited.

The language from the case that the applicant cited can be construed to mean that a zoning regulation is not permissive in nature and, therefore, if something is not expressly permitted by the regulation, then it is prohibited. Consequently, it is concluded that only a single family dwelling is permitted to be built under Section 14.02A.

Finally, Section 10.00 of the Code provides that "Except as hereinafter specified, it shall be unlawful to use any land structure, or building or to construct, erect, structurally alter, enlarge or rebuild any building or structure or part thereof unless in conformity with the provisions of this Code." Section 14.02A only allows for a single family dwelling.

CONCLUSION:

Section 14.02A allows only a single family dwelling to be built on a non-conforming lot which exists in a zone permitting single family dwellings.

Ralph E. Wilson
City Attorney

REW/es