

Town officials continue to scrutinize the house that Jack built

By Sam Bari

Windridge Properties owner John Brittain was recently issued a zoning violation notice and denied a certificate of occupancy for his new building at 14 Clinton Ave. These are the latest challenges that have kept the new home of Jack's Electric from reaching completion.

Town building official Fred Brown refused to grant the certificate of occupancy because of a list of differences between the approved plan and the constructed building. "I couldn't issue a certificate of occupancy because Jack broke the most important rule of development," Brown said. "He did not build according to the approved plan."

Brown went on to explain that applications for variances and special use permits are designed to allow changes to plans and make exceptions to ordinances. He added the town understands that needs and circumstances can change during the construction process that sometimes require revisions to plans, but the town needs to be informed, and any changes must be approved.

He also said that most of the revisions that Brittain made do not require a variance or special use permit, which would be issued by the Zoning Board of Review. Brown said the changes could have easily been approved with a simple explanation and the submission of revised plans to the planning office.

Town Planner Lisa Bryer concurred with Brown and said that she didn't understand why Brittain thought he could add a third floor without telling them when a third floor did not exist in the approved plan. "The addition of the third floor seriously altered the parking requirements," Bryer said.



Jack Brittain

The town planner went on to list other revisions that she said needed to be addressed. "He added a staircase to the third floor that wasn't in the approved plans. We approved pull-down stair access to the attic crawl space." Bryer also said that two big doors had replaced four exit doors that were in the approved plan on the first floor.

She mentioned that rooms designated for storage on the second floor were changed to offices, and the mechanicals were moved from the second to the third floor to make room for storage. Additionally, she said Brittain added a window to the second floor that wasn't in the plans and raised the roof line well over a foot to add headroom to the third floor.

"It wasn't as if he didn't know about our concerns," Bryer said. "I sent him a letter in July of 2006 that contained a list of discrepancies and he never responded."

At the last Planning Commission meeting, Chairman Gary Girard was quoted as saying that the situation was "a comedy of errors."

He also said that Brittain was issued a five-page memo on Feb. 15 of this year that again revealed a list of "items of significant non-compliance."

Bryer said that "a change here and there is no big deal, but the cumulative effect of the long list of major changes over a two-year period has caused serious concern."

Brown said that the addition of the third floor requires six more parking places. He also said that Brittain's only recourse was to present the revised plans to the Planning Commission along with an application for shared parking with an abutting property and ask for a recommendation to the zoning board, or take out the third floor and adhere to the original approved plans.

In addition to the lack of a certificate of occupancy and a zoning violation notice, abutting neighbor Frank Andres, whose property is across the street, is again challenging Brittain. Jean Scott, an attorney representing Andres, questioned the turning radius provided for Jack's Electric trucks at the entrance to the driveway, saying that the radius is inadequate to make safe turns.

On Nov. 22, 2005, Andres appealed to the zoning board to reverse the decision to approve the building permit issued to Brittain on Sept. 23, 2005. Brown issued the permit because he had determined that the continued use of the property by Jack's Electric was consistent with its past and therefore deserved approval.

Town Councilman Bill Kelly, who sat on the Planning Commission at the time agreed with Brown and supported his decision in a letter.

The appeal was denied, but Andres appealed the case again, this time to the Superior Court in Newport. The appeals resulted in court orders to cease and desist construction until a decision had been made. Construction was stopped for a total time of well over four

months.

Brittain defended his revisions by saying that he thought he was within his rights to make the changes that were mostly to the interior and didn't affect the use of the property or the number of personnel working in the building. He said that the alleged third floor was still an attic that would be used for cold storage and to house mechanicals. He also said that the attic was not insulated, heated or air conditioned because nobody would be working there. Consequently, there was no need for additional parking.

Additionally, he said that the staircase to the attic and the finished floor were installed for safety reasons. He referred to the weight of the heating and air conditioning units as reasons for the finished floor. He mentioned that the pull-down ladder was dangerous and awkward for personnel carrying boxes up to the attic for storage and he determined that a staircase would be a reasonable solution.

Brown and Brittain both disagreed with Bryer about the height of the building being raised to create headroom for the third floor. Brown said that he did not have a problem with the height.

Brittain said that the metal roof that was approved by planning was inconsistent with other buildings in the area and alleged that it was errantly approved. Consequently, his decision to install a more expensive shingle roof kept the building in compliance with zoning regulations.

Explaining the extra window, Brittain said he installed the second floor window instead of an approved sign because it is against zoning regulations to place a sign above the roofline. "I don't need a sign for the business since we don't have retail traffic. I thought the absence of a sign would be better for the neighborhood," Brittain said. He also mentioned that the building was energy efficient and

the window would allow for more natural light.

Brittain pointed out other concessions that he made as goodwill gestures to blend in with the neighborhood. When he was given permission to take out an unsightly tree, he said he replaced it with three flowering trees and also donated five additional trees to the town for use as they saw fit.

Bryer said this was an agreement Brittain made with the tree committee in exchange for allowing him to remove a tree.

Brittain's attorney Jim Donnelly, said he takes exception to Brittain's project being treated differently than the town hall. He said that the new town hall has comparatively no parking, and since they have such high traffic, they should be required to have much more parking than they can now provide.

Donnelly also mentioned that the height of the building is exactly as indicated in the approved plans.

Although Brittain has apologized to the Planning Commission for the miscommunications, has applied for a special use permit for shared parking with abutting property owner Ed Holland, and has the support of the downtown business community. He still might not be out of the woods.

Chairman Girard said that he would like to see an easement in perpetuity from Holland in case the abutting property is sold and the agreement for shared parking would no longer apply.

Brown said that as long as Brittain's special use parking application is approved by the zoning board and the construction is in compliance with the revised plans, he felt that the revisions were reasonable and that he would have no problem issuing a certificate of occupancy.

The contested property is on the Planning Commission agenda for the May 16 meeting when the commissioners will define their position and decide whether to give Brittain a recommendation to the zoning board.

The zoning board is scheduled to review the application on May 22. Between now and then, the house that Jack built will remain unoccupied.

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LEGAL TIP

A hotel franchisor could not be held financially liable for the murder of a guest at a franchisee's hotel, the Mississippi Court of Appeals has ruled.

Three individuals went to a casino parking lot looking for someone to rob. After noticing the plaintiff and her husband, they followed the couple back to their hotel and got the husband to open the door. In the ensuing struggle, the husband was fatally shot and the plaintiff injured.

The plaintiff sued the hotel franchisor, claiming that it had failed to provide reasonable security to protect guests at the hotel and that its negligence had resulted in the plaintiff and her husband being harmed.

But the court held that franchisor could not be held vicariously liable because it did not control or have the right to control the day-to-day operation of its franchisee's hotel.

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