



**TOWN OF WEST BOYLSTON PLANNING BOARD** [planningboard@westboylston-ma.gov](mailto:planningboard@westboylston-ma.gov)  
140 Worcester Street \* West Boylston MA 01583 \* Phone 774-261-4073

**PUBLIC HEARING MEETING MINUTES**

**90 Sterling Street**

**January 25, 2017**

Chairman: Christopher Olson

Members Present: Vincent Vignaly, Marc Frieden, Barur Rajeshkumar, Cheryl Carlson

Members Absent: None

Others Present: See Attached Sign-In Sheet

**All documents referenced in these Minutes are stored and available for public inspection in the Planning Board Office located at 140 Worcester Street.**

The Chair opened the continued Public Hearing at 7:05 p.m. Joe Peznola (Hancock Associates) was present.

Mr. Peznola said they received review letters from VHB, incorporated the changes, and provided a revised set of plans. Regarding the layout: they relocated two parking spaces and left pavement for snow storage. The two parking spaces were relocated to the southeast corner. The aisle width was increased to 24". Sight distance has been noted on the plan. The retaining wall will have a chain link fence. They adjusted the grading at the retention walls so they are not higher than 4' and don't require a building permit. The site has two levels with a steep driveway that comes in off Sterling Street. They are steepening the hill to make the lower plateau and moving the final plateau to the back of the property with the walkouts. The slope is 3:1 and will be stabilized with loam and seed. They added services to the individual units (electric, cable, telephone, etc.). The drainage system was enlarged to accommodate corrected rainfall totals. There was a question whether the site was within Zone A. Mr. Peznola said they are and they are not doing any work or construction within Zone A. He said they used higher standards for doing stormwater within a critical area, they have eliminated the prior treatment they proposed and replaced it with a grit separator. It meets the requirements and higher treatment levels. They are now treating the 1" rainfall rather than 1/2" rainfall and supplied stormwater calculations to support that.

The one remaining item to be completed is the soil testing. They are asking the board to consider that post-permit. The landscaping plans have been updated. They added the erosion & sediment control plan, BMP location plan and added the signature block to the detail sheets. He provided Architectural Plans, SWPPP, Sewer Flow Velocity Analysis and Stormwater Management.

VHB's January 23, 2017 letter indicated that the Zoning Board of Appeals Special Permit is an open item. Mr. Peznola said they presented a subsequent letter to the board on January 12, 2017 in order to clarify the issue. They are confident from a zoning standpoint that they received the relief from the ZBA.

Mr. Frieden asked if there would be a note on the stormwater management plan concerning an event spill. Mr. Peznola said it is a low risk concern, but the board could condition it. VHB was not overly concerned because it is a residential area. Mr. Vignaly said the detail on the catch basins (Detail Sheet 1) does not show hoods. Mr. Peznola acknowledged that and said they do require hoods. Asked about the grit separator (Detail Sheet 2), Mr. Peznola said it is a triple baffle septic tank. Outstanding is the soil test. The BMP location plan shows the infiltration system on the southeast portion of the property under the existing building. Mr. Vignaly asked if there was a way to do one test in advance and the other two tests after the building is demolished. Mr. Peznola agreed to do that.

Mr. Olson thanked Mr. Amico and Mr. Herget for their letters summarizing the issues; he found them very helpful in his understanding of the issues. He separated the two issues of Use and Structure based zoning. Use: they are in a strong position, given that they are taking a use that is not allowed at all by Zoning in this area and changing it to something that is allowed; a compliant use with a Special Permit from the Planning Board. He does not see a problem as it pertains to the proposed use. Structure (specifically the dimensional requirements): first, it appears that the Special Permit for the density requirement from the ZBA gives them permission to increase the density on the lot; the second part of the requirement talks about one habitable building per lot; it is currently non-compliant with Zoning. What they are proposing is also non-compliant with Zoning because there is more than one habitable building per lot, but because it exists currently as non-compliant, they could get permission from the ZBA to extend the non-conforming lot. The question is whether what they have already received from the ZBA qualifies as permission to extend that particular non-conformance to this particular plan. His thought is that what the ZBA had in front of them was a plan with 3 buildings on it. They didn't mention the particular section of the bylaw and they didn't mention the number of buildings beyond saying what was on the plan in front of them. Mr. Olson said in his view, the Special Permit from the ZBA is not sufficient to rise to giving an extension of up to 8 buildings on the lot because they didn't have that plan in front of them; therefore, they could not have approved the 8 buildings. He understands that they were in negotiations with the ZBA in trying to figure out how many units would ultimately be allowed. Going from 2 habitable buildings to 8 is a significant extension of the non-conformity, and his understanding of the bylaw is that the only body that can approve that type of extension is the ZBA, not the Planning Board.

Bentley Herget (Building Inspector/Zoning Enforcement Officer) said the ZBA only specified the number of units, not buildings. What was proposed in front of them was 3 buildings. Mr. Olson said there was a lack of clarity. They did not have the plan with 8 buildings so they did not specify that. He has a hard time viewing 3 buildings to 8 buildings as not being an extension of the non-conformity of that particular portion of the bylaw. Mr. Peznola said the ZBA Chairwoman stated that she was not concerned with the number of buildings; only the units. He said they had a series of plans that were presented and looked at different configurations and believes they have the relief. The ZBA approved it without benefit of a plan. He believes the plan is immaterial, it is more going to the criteria to grant the Special Permit and that is, is the change, extension or alteration more detrimental. The ZBA concluded that 16 units was not more detrimental, with their focus primarily on the type and number of units.

Mr. Vignaly said while the ZBA Chair said she didn't care about the number of buildings, it was not an act of the ZBA. When the ZBA acts, it acts on variances and approves certain variances. If the board does not specifically approve a variance, it is not approved. The ZBA approved 16

units, but have not approved affirmation to the increase in habitable dwellings per lot or the number of bedrooms. He believes it should go back to the ZBA to get that information before we can act. The ZBA shall issue a Special Permit in compliance and acceptable for the neighborhood. Typically, the applicant notes clearly what they are requesting so it can specifically be acted on. He doesn't believe the ZBA gave approval for 8 buildings.

Mr. Peznola said that would put them in a precarious position with regard to re-litigating something they believe is already set. The bottom line is, the provision under the state act for a continuation, modification or alteration of a non-conforming use, structure or lot is a very powerful piece of regulation. It recognizes the inherent value of that property. With regard to an application for a Special Permit for change, modification, alteration or expansion of a non-conformity, it is recognizing the existing non-conformity and allows the change to another non-conforming condition. The power is in granting the Special Permit. Where the Special Permit was silent on issues such as the number of buildings, they are left with a decision that allows the continuation, change or alteration of the non-conformity. With regard to the process, he said they can do one of three things: (1) reapply to the ZBA for a formal modification of the Special Permit, which would re-open the public hearing, which they would have to appeal; (2) have the Planning Board request that they go to the ZBA for clarification; or (3) leave it to the Zoning Enforcement Officer to be vetted at the issuance of a Building Permit, which is appealable.

Mr. Olson asked the Zoning Enforcement Officer, currently on that lot there are 2 habitable buildings which are non-conforming as it currently exists. In his view, is the proposal from the current non-conforming status of 2 up to the proposed 8 buildings a change or extension of the non-conformity with respect to that specific section of the bylaw (Section 1.4B). Mr. Herget said the ZBA said they can replace the two buildings, but was not specific with what, just 16 units. Mr. Olson asked if that meant they essentially have approval for 16 buildings on the lot; Mr. Herget said his interpretation is that they could. Mr. Olson said that is a significant difference. Mr. Herget said the ZBA was silent on that and we have nothing to base it on. Mr. Peznola said the board was focused on units. They were proposing more buildings than the non-conformity. The decision is silent. Mr. Rajeshkumar asked if the number of buildings came up with the ZBA; yes. The board had the ability to condition the number of buildings.

The developer believes they have put together a good plan which is a vast improvement; the board agreed. He also believes the Zoning Enforcement Officer has spoken to it. If the ZBA is silent, there is an appeal period, and that time has passed; you cannot go backwards. He said if they have to litigate, they will. They are putting forth units the people and the town will be proud of; it won't be detrimental to the town. The ZBA had an opportunity to make the decision but did not. If in the Planning Board's opinion it is written poorly, that is something that has been worked out within the town for future decisions; not based on this decision. He said the board should listen to the Zoning Enforcement Officer and his interpretation of the ZBA decision. Mr. Olson agrees with a lot what he said. Mr. Frieden also agreed and wanted to make the point that he believes the ZBA decision said you can have 16 units in the maximum number of buildings shown on any plan. He thinks it is a good project as far as the engineering and layout. The only hang-up is the silence in the ZBA decision that makes the board interpret it. The board asked for a letter from the Building Inspector with his interpretation. Mr. Herget sent an email January 5, 2017, but it did not say anything about habitable dwellings per lot. He was asked if he could write a letter that clearly reflects his interpretation of the allowed number of habitable dwellings on the lot. Mr. Vignaly said we need something to base our decision on. He doesn't feel that it

meets Zoning; the board has nothing in front of them that says 8 is ok. Mr. Herget sent a response letter to VHB dated January 23, 2017 addressing their concern for the Building Inspector to give an opinion on the ZBA decision. It is the Building Inspector's opinion that the ZBA has spoken with their approval of the number of units, not the number of buildings, and as the Zoning Enforcement Officer of the Town of West Boylston, is in agreement with the ZBA matter.

Mr. Vignaly said the letter doesn't say anything about habitable dwellings. If the Building Inspector could draft something that he believes, under the state law, if the ZBA doesn't specifically grant a Special Permit, it can be understood that it is granted under Section 1.4. If the ZBA doesn't clearly allow it, then we need a letter from the Building Inspector. The letters to date do not say anything about habitable dwellings. Our bylaw states one "habitable dwelling" per lot. Currently there are two, which is an existing non-conformance. Can the existing non-conforming be changed by a decision that was made by the ZBA for something else? The ZBA only granted a Special Permit for 16 units; it does not speak about "habitable dwellings". The board needs something about habitable dwellings. The board wants to make sure it is not in violation of Zoning. Mr. Olson said they have requested both a Special Permit from the Planning Board and a Site Plan Review. Under both of the bylaws, before we can grant approval of either, there is express language that says we have to check to make sure all bylaws are in compliance with the plan before the board. What we are struggling with is that you have complied with the Site Plan Review, it is just about the total number of habitable dwellings, and did the ZBA give you sufficient protection to put in 8 buildings there instead of 2.

Mr. Olson said regarding the scope of the Special Permit that was granted by the ZBA, the Building Inspector does not have the authority to give that kind of Special Permit, so part of the issue is does the Building Inspector have the authority to make the interpretation that we are talking about or do we go back to the ZBA and get clarification as to what they meant when they granted the Special Permit. Mr. Peznola said the ZBA granted the expansion of the number of units and were specific in their condition of that. They granted the expansion of the number of buildings by virtue of the fact that there was never a plan before them that only had two buildings. Mr. Olson said we have to vote on what is before us.

Mr. Vignaly said the board is waiting for something stating that the Building Inspector's interpretation that the habitable dwelling standard is met. Mr. Herget stated that his interpretation of Section 6 of the state law allows the ZBA to make blanket approvals for zoning non-compliance without specifically stating it. That was what the board wanted to hear.

Mr. Olson said we have to follow zoning, not what we desire or like; that is our function as a board. He asked Mr. Herget if he could give the board something in writing in respect to the number of habitable dwellings on lot and how his interpretation of what the bylaw allows, what is currently there, what is being proposed (8 buildings), and given that situation and the ZBA Special Permit that they granted, that he feels that that part (according to his understanding of the law) of the bylaw is met. Mr. Frieden suggested a reference to this specific plan be included in his letter. Mr. Amico said as he reads Section 1.4B, the Zoning Board has already covered the Planning Board with any concerns because they could not have issued the Special Permit if they felt the project was substantially more detrimental to the community, and the only stipulation they put in was 16 units. Mr. Frieden made a motion to table the issue to 8:50PM; Ms. Carlson seconded; all voted in favor motion approved.

The hearing was re-opened at 8:50PM. Mr. Herget submitted a written letter that included the information the Planning Board required. Mr. Olson said the letter prepared and provided by the Building Inspector is his attempt to deal with the difference, and the board must determine if it is sufficient for our purposes and if they are entitled to grant a Site Plan Approval and Special Permit.

Mr. Amico said with this latest letter that he is confident that they addressed all issues with the exception of the test pits which can be a condition of approval. Mr. Frieden made a motion to close the Public Hearing; Ms. Carlson seconded; all voted in favor; motion approved. A draft approval letter will be sent to the applicant for review and a possible vote at the next meeting.

Date Accepted: \_\_\_\_\_

By: \_\_\_\_\_  
Vincent Vignaly, Clerk

Submitted by: \_\_\_\_\_  
Melanie Rich