



Town of West Boylston
140 Worcester Street, West Boylston, Massachusetts 01583

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting

Friday, June 15, 2018/5:00 p.m./Selectmen's Meeting Room **(NOTE: REGULARLY SCHEDULED JUNE 21 MEETING WILL BE CANCELLED)**

Members Present

David Femia (Chair), Christopher Olson (Vice-Chair), Barur Rajeshkumar (Clerk), Nathaniel Orciani, Charles Witkus, and Toby Goldstein (Secretary)(Andrew Feland, Associate Member, did come to the meeting, but left as there was a full board present)

Members NOT Present

John Benson (Associate Member), and Daniel Cronin (Associate Member)

Invited Guests

Carolyn Murray (Town Counsel), Bentley Herget, Building Inspector (he was not able to attend); Iqbal Ali, Developer, 92 North Main Street; Paul Haverty (Mr. Ali's Attorney)

Welcome – Call to Order

Time: 5:30 p.m. (by Mr. Femia, who arrived at 5:27)(Town Counsel Carolyn Murray arrived at 5:30)

Approval of Previous Minutes

Not done at this meeting.

Motion Originator N/A

Motion Seconded N/A

Treasurer – Financial Report

Not done at this meeting.

Motion to Accept N/A

Seconded N/A

Mr. Femia called the meeting to order at 5:30 p.m. He announced the date, the fact that this was a special meeting, and the names of all present.

Rescind vote of 5/31/18 of the proposed bedroom changes at 92 North Main Street, Building C; discussion and vote on the proposed bedroom changes at 92 North Main Street, Building C and changes to Building A to add a yoga room, fitness center and leasing center:

Mr. Femia explained to those present that this special meeting's purpose was to re-discuss the above subject, which was voted upon at the May 31, 2018 meeting, and for the board to take another vote; in order for them to do that, they would have to rescind the previous vote. Mr. Olson commented that he did not remember any time when a vote was taken after deliberation and rescinded by the board. He wanted information as to why they should do it in this case, as he's not sure he would have agreed to do it before. Mr. Femia explained that they are trying to avoid bringing HAC (Housing Appeals Court) into the matter. He explained that the board did not approve the above changes as insubstantial, and Mr. Ali asked if he and the board could talk about this again before resorting to filing with HAC to appeal the decision. He said that Town Counsel did not think that they should sit down again, and should see if there is any change in vote. Mr. Femia believed that they had to take another vote just in case anything changed.

Mr. Haverty explained that this is an informal process, not a public hearing, and he asserted that the board can still decide if the changes are not substantial because it is informal, and that they can always accept a motion to reconsider even with a public hearing. Mr. Olson responded that he thought Mr. Haverty was correct, but before the vote is rescinded, he would like to hear Town Counsel's advice before voting. If there is a new reason, maybe it is justified, but if there is no change, he hesitates to reopen. Mr. Orciani agreed with Mr. Olson. Mr. Rajeshkumar opined that they should vote after they hear all the information. However, he asked how many times will this be done, where perhaps the applicant does not like a vote, and a new issue comes up, causing the board to have to revote? He questioned whether public confidence would be affected by doing this? He believed that there was no reason to revote today. For the record, he opposed this meeting, and believed it to be a waste of the board's time and Town Counsel's time. He believed that the board must protect ZBA's integrity, and said that they have no idea what the court will say. Mr. Femia responded that Town Counsel believed that HAC would rule against the ZBA. Mr. Rajeshkumar responded that this should be prepared by Town Counsel. Mr. Femia then suggested that they not revote, and have a public hearing at the end of the month where they will have to vote again, and opined that the applicant will go to HAC if they do not do that. Mr. Rajeshkumar responded to Mr. Femia, that the board looked at all the evidence on that day, and opined that they will lose the confidence of the residents. Mr. Femia responded, that if they need to go to HAC, more money will be spent on Town Counsel, and opined that the Board of Selectmen complained about the amount of money spent on Town Counsel by the Town boards, and reiterated that the board has a chance not to go to HAC, as a public hearing is set up already (posted with the Town and advertised in the Telegram and Gazette for June 29, 2018).

Mr. Haverty continued, saying to clarify, that the applicant requested modifications, and the board has time to decide if they are substantial or not. There is a public hearing set up, but he opined that nothing will support the denial of the modifications. He did not think his client should participate because he believed it will end up back with HAC, but the applicant can appeal the determination. The posted public hearing for June 29 will be cancelled because they will go directly to HAC. He reiterated that the bylaws are clear that less than a 10% change in bedrooms is considered an insubstantial change.

Mr. Femia then summarized that whatever is stipulated in the Comprehensive Permit (he looked at a copy there) should be the unit mix as shown on the final plans; Building A would have 14 units, comprised of 6 two-bedroom and 8 three-bedroom units, Building B would have 28 two-bedroom units, and Building C would have 38 units, 14 one-bedroom and 24 two-bedroom. He reiterated that the applicant said nine of the one-bedroom units had a den. Mr. Femia remarked that he looked at the plans of the Building Inspector; the only plans that indicated

anything else were of Mr. Ali's architect, Jerome Dixon, dated (5/2/18), which noted rooms with French doors. (Mr. Femia instructed Ms. Goldstein to put this into the record), and, reading aloud notes from the architect, these French doors were for spaces that did not require privacy; he said that the French doors were for rooms that were "not bedrooms but were simple solutions which are appropriate for spaces such as studies, offices or dens which do not require visual privacy. " The plans that he sent show nine units with a den, but the Building Inspector's final plans which he approved did not show dens. Mr. Femia noted, the Comprehensive Permit mentioned nothing about dens. He asked Mr. Ali, why he would want to change the arrangement now, after all units were built and rented, and why did he not at least go to the Building Inspector before with these changes? Mr. Haverty responded, that 760 CMR allows the applicant to request modifications, and there are no time restrictions; it gives a list of substantial and insubstantial changes. Mr. Femia then read aloud the section about changes after issuing of the permit, and it mentions "promptly" making the changes, and he asserted that, when Building C was built, the changes should have been requested. Mr. Haverty responded that he did not disagree that they should have gone to the board sooner, but asserted that they are now following the proper process and asked the board to follow the proper process and suggested that the board should review the regulations and decide that things were done according to the regulations.

The board and Mr. Ali then discussed the rates of the affordable apartments. Mr. Rajeshkumar then opined that the Town needed one-bedroom apartments. He said that the ZBA wanted 14, but 4 are affordable. He opined that people cannot rent them. He stated that no documentation was provided before building, and he opined that Mr. Ali wanted to make a profit on two-bedroom units. Mr. Rajeshkumar asserted that the bedroom changes would affect the school, traffic, and parking. He reiterated the fact that Mr. Ali had changed many things without the board's knowledge. Mr. Haverty responded that the board approved a larger project originally (96 units), and the client had to reduce it; he explained that, during construction, Mr. Ali found that he had to make changes such as eliminating items like elevators, for example, which left a lot of extra space, so the dens were incorporated during construction.

MR. Rajeshkumar responded, that a clear architectural plan was submitted to the board, with all the dimensions. MR. Haverty responded that school children was not a legitimate reason to make any decisions regarding Chapter 40B. Regarding sewer and water, change in sewage would not be enough to be significant, and if it was sufficient to support 96 units, then it would be sufficient for these, and he asserted that there is more than enough parking. Mr. Rajeshkumar responded that his vote will not change. Mr. Ali responded that the parking was designed for 96 units, and he opined that Mr. Rajeshkumar never liked 40B projects and asserted that he had never voted in favor of a 40B; Mr. Ali also asserted that Mr. Rajeshkumar had no reason to vote against it, and opined that he had no right to sit on the board in front of this matter. Mr. Rajeshkumar responded that Mr. Ali had no authority to say that he should not sit on the board, and asserted that, if Mr. Ali called them one-bedroom units, he should stick to that.

Mr. Femia then asked Mr. Ali if the nine one-bedroom units with den were rented? Mr. Ali replied that they were. He asked Mr. Ali if he were now going to rent the one-bedroom with den as two-bedrooms? Mr. Ali asserted that these units had a glass door so it was not a bedroom, and that one-bedroom with French door was shown to the Building Inspector, who agreed that it was not a bedroom, as there was no privacy. Mr. Femia, however, referring to the architect's letter, noted that Mr. Ali planned to convert the nine one-bedrooms with den to two-bedrooms, and the rent increases from \$1,275/month to \$1,530/month (for Unit C315, the example given)(Mr. Ali noted that's for affordable units), but Mr. Femia asserted that the rents will still go up with the extra bedroom. He then introduced Town Counsel, and mentioned to her that Mr. Olson and Mr. Rajeshkumar had concerns, and asked her what could happen depending on the board's decision.

Ms. Murray apologized for being late, and said that, regarding the modifications requested, she had previously advised the board that DHCD had a certain guideline of things that they consider to be substantial and insubstantial changes. She explained that generally it is not substantial the change in total number of bedrooms in the development if there is not greater than a 10% change in bedroom total, and in this case, the increase in bedrooms would be less than the 10%, so that it would lean towards being insubstantial according to DHCD. But, she continued, regarding the process, the board had 20 days to decide if the request is substantial or not, and if they deem the changes to be substantial, they will need to have a public hearing within 30 days. Atty. Murray reiterated that, in the vote of May 31, the majority found that the increase in bedrooms was substantial, then the deadline was June 30 for a public hearing, which must be advertised two weeks in advance; if this is not done, failure to act will be constructive approval. Also, she continued, if the applicant disagrees, he can appeal to HAC within 20 days. Ms. Murray explained that the purpose this evening, given DHCD's regulations, is if the applicant goes to HAC, HAC will probably disagree with these being substantial modifications. But, if the decision still holds the vote, the applicant has another option, which is to continue to go forward before the board and challenge them, and not go to HAC. Her guess is that the applicant probably won't submit to a substantial modification hearing before the board, and will go to HAC. Atty. Murray explained to Mr. Femia that HAC will have a hearing at the committee level, and the regulations call for an expedited process, so they typically try to render a decision within 30 days of the hearing. Mr. Femia, Mr. Haverty and Ms. Murray discussed who would be involved; there would be Mr. Haverty, Ms. Murray, and the HAC officer involved, and they would look at each position and see if there was any possible resolution. Mr. Haverty commented that, if the applicant did not come here this evening, HAC would probably have said that they should go to the board again.

Mr. Femia then asked about the subsidizing agency, and if they would make a decision until this matter was resolved? Ms. Murray responded that she could not really say, but final approval usually is not given unless the project is final, and where there is a pending modification they might not do so. Mr. Haverty corrected this to say final approval was given, and that construction cannot begin without final approval, and responded to Mr. Femia that the subsidizing agency wants to know about any changes, and he had sent them a copy and they want updates. The last thing that he sent them was that if the ZBA voted that the modifications were substantial, the applicant would go to HAC. Mr. Femia responded that it did not seem that the board wanted to change their decision, and notified everyone that Ms. Goldstein placed a public hearing advertisement in the Telegram and Gazette (for June 29), and had abutters' notices ready to mail.

Mr. Rajeshkumar then suggested that the discussion should be at an open meeting as a decision was already given, and commented that previously the board thought that they heard all the facts, and took a vote, and he thought that rescinding the vote will send the wrong message to the public for future issues, and affect the confidence of the public; he asserted that, if the vote was "yes", the board would not take another vote, and added that he did not want to speculate anything about what will happen at a HAC meeting. Mr. Femia opined that Mr. Haverty was correct regarding the schools not having any influence on the decision, as Mr. Femia heard this at a conference of the Housing Institute. Mr. Rajeshkumar responded that the board voted as it did, and asserted that they have to follow through.

In response to a question from Mr. Femia as to what they will do next, Mr. Haverty replied that he had not heard anything that suggested the need for a public hearing, and if the board will not reconsider their vote, the applicant will file with HAC. Mr. Olson responded that this evening, he was less concerned with the substantial or insubstantial question, rather than revisiting the vote. Mr. Haverty responded that he and the applicant were trying to save themselves and the Town the expense of going to HAC, and reiterated that he did not think that they were at the public hearing stage yet, and they wanted the board to at least vote on rescinding the previous vote.

Ms. Murray continued that a motion can be offered and a vote be on the record, or maybe no one will second the motion, and if the vote stays, the Town will incur legal expenses. Also, what is the basis for substantial, in light of the regulations? The board needs reasons if it goes to HAC; there has to be a basis to defend their decision. Some burden is put on the board to articulate their arguments. Mr. Femia asked if the board members will testify at the hearing to justify their decision? Ms. Murray replied that it depends, as this is not like the original 40B appeal; a lot is simply legal argument, but if there are concerns such as sewer, they will need to discuss basis vs. speculation. Mr. Femia reiterated that the plans that the Building Inspector approved were not what the project was built upon, and that the Comprehensive Permit stated the number of units and bedrooms in Building C, with nothing mentioned about dens. Ms. Murray replied that nothing was said about there being no dens, either, and said that an "as-built" plan is requested when the project is completed, as construction is rarely as it was presented to Planning Board.

Mr. Femia reiterated that the applicant should have at least gone to the Building Inspector with the changes. Mr. Rajeshkumar commented that he was not comfortable with an open meeting, in case the matter went to court. Ms. Murray added that a decision is made based on information in the record, so that, if the reasons for the changes being substantial are to be given, it must be in open session. Mr. Haverty continued that the board needs to realize that the presumption is in favor of the applicant, and the board must put forth evidence; they need experts to testify that the changes are substantial, and this will cause significant expenditure of money by the Town. Mr. Rajeshkumar responded, asserting that he did give his reasons, and also said that he was not worried about what will happen in HAC. He opined that there was no reason to re-vote today.

Mr. Ali responded to a question from Ms. Murray, stating that they had sufficient sewer capacity after a study in 2015, adding that it was for 96 units. Also in response to Atty. Murray, Mr. Ali stated that there were no changes or new reviews regarding the sewer. Mr. Haverty opined that it would be hard for the board to come up with good reasons for considering the changes substantial. Ms. Murray thought that it would be worth making a motion for the record. Mr. Olson then made a motion to rescind the vote of 5/31/18; however, no one seconded the motion.

Mr. Femia then asked Mr. Haverty if they were going to file with HAC on Monday, July 2? Mr. Haverty replied "yes". He agreed to send a copy of the filing to Atty. Murray. Regarding cancelling the public hearing previously scheduled for June 29, Mr. Rajeshkumar suggested not cancelling it until the HAC filing is done. Also, for the record, at the last meeting, he asserted that Mr. Ali stated that the difference between a one- and two-bedroom unit would be \$50.00, but that this is not true and he wants to see documentation.

Other Business:

Miscellaneous Mail and Paperwork Needing Signatures:

N/A

Future Agenda Items/ZBA Reports:

Mr. Rajeshkumar wanted to request an agenda item for the next meeting to be reorganization of the ZBA board – he wanted this to be on the record. He asserted to Ms. Murray that this was requested at the last meeting also.

Next Scheduled ZBA Meeting – Thursday, July 19, 2018, 7:00 p.m.

Mr. Femia told Ms. Murray that the board will cancel the public hearing for June 29 after the applicant files with HAC.

Any Items Not Received Prior to 48 Hours Before Meeting:

N/A

NEXT MEETING **Thursday, July 19, 2018, 7:00 p.m.**

MOTION TO ADJOURN

Motion Originator **Mr. Rajeshkumar**

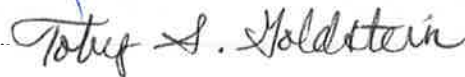
Motion Seconded **Mr. Witkus**

Time of Adjournment **6:28 p.m.**

Signatures


Barur Rajeshkumar

Submitted by: **Toby S. Goldstein**



Date Submitted:

7/19/18