



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, September 20, 2018/7:00 p.m./Selectmen's Meeting Room

Members Present

**Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia, and
Secretary Toby Goldstein**

Members NOT Present

**Nathaniel Orciani, Charles Witkus, John Benson (Associate Member), Daniel
Cronin (Associate Member) and Andrew Feland (Associate Member)**

Invited Guests

Iqbal Ali

Welcome – Call to Order

Time: 7:01 p.m. (by Mr. Olson)

Approval of Previous Minutes 7/27/18 (Executive Session) and 8/16/18 (Open and Executive Sessions)

Motion Originator Mr. Femia (7/27 and 8/16)

Motion Seconded Mr. Rajeshkumar (7/27 and 8/16)

Treasurer – Financial Report Mr. Femia reviewed the accounts and balances on statement dated 8/31/18

Motion to Accept N/A

Seconded N/A

Minutes of July 27, 2018 Meeting (Executive Session):

After review of the draft minutes by the board, Mr. Femia made a motion to accept the minutes as written. Mr. Rajeshkumar asked if any vote was taken at that meeting; Mr. Olson replied that the only vote was to enter and leave Executive Session, but no other votes were taken. Mr. Rajeshkumar then seconded the approval. All in favor.

Minutes of August 16, 2018 (Open and Executive Sessions):

After review of the draft minutes by the board, Mr. Femia made a motion to accept the minutes as written. Mr. Rajeshkumar seconded. All in favor.

Request for Modification at 92 North Main Street and Consideration of Amended

Comprehensive Permit (Vote may be taken):

(Iqbal Ali represented). Mr. Olson informed Mr. Ali that the board received later last week (stamped 9/13/18) his request for an independent request for modification where Mr. Ali is requesting that the board find the modification to be an unsubstantial change; Mr. Olson's understanding was that the request dealt with the nine one-bedroom w/den units, and two will be affordable once it is time for the tenants to renew their leases and they decide that they do not want to stay. In addition, out of the five one-bedroom units without a den that remain, three will be affordable. Mr. Ali noted that there would be 21 affordable units in total instead of 20. In response to a question from Mr. Femia, Mr. Olson and Mr. Ali replied that they would have to go to MHP about the affordable units. Mr. Ali asserted that David Rockwell at MHP gave it his approval. Mr. Femia suggested that Mr. Olson contact Town Counsel or send something directly to Mr. Rockwell to request in writing that MHP has no issues with the 21 affordable units so that the board has documentation that MHP is on board with this. Mr. Ali noted that MHP has to approve the project anyway for final approval and financing. Mr. Femia explained that he wanted this documentation because there was a specific issue with this item. Mr. Ali did not think that MHP would do that; rather that ZBA would have to send paperwork of what they are approving and if MHP has a problem with it, they will let the board know. Mr. Olson and Mr. Femia responded that the board would reach out to Town Counsel. Mr. Ali asserted that Town Counsel and his attorney had MHP involved and MHP had monitored the whole situation. Mr. Olson asked Mr. Ali if, in his experience, MHP should not have an issue with going from 20 affordable units to 21? Mr. Ali responded that, if they won't finance him, he will have to go elsewhere for financing, but he would like to close the loan with them and added that they also did the regulatory agreement.

Mr. Rajeshkumar then mentioned an e-mail from August 18 from Mr. Olson. Mr. Olson explained that the board had an Executive Session around that time (August 16), and after that, the board reached an understanding of how to avoid going to court, and Mr. Olson reiterated this in an e-mail (August 18). In it was a counteroffer between Town Counsel and Mr. Ali's attorney of three of the nine one-bedroom units w/den being affordable; he continued that, two or three weeks later, when putting this into writing, the two attorneys somehow had a misunderstanding and the board thought that the 3 affordables of those nine units were additional, making 23 affordable units. So, the board believed there to be 23 affordable units, and Mr. Ali was planning on 20; they ended up with 21, which was still within the scope of what was discussed. (Mr. Rajeshkumar then referred to the Executive Session meeting of August 18, and Mr. Olson declined to elaborate beyond referring Mr. Rajeshkumar to the items agreed upon as the meeting was confidential).

(Mr. Rajeshkumar and Mr. Ali then disagreed as to whether or not this agreement would be fair for the Town as well as for Mr. Ali). Mr. Rajeshkumar then asked Mr. Ali, reiterating that, of the nine one-bedroom w/den units, two are affordable and seven market rate, if all nine were rented? Mr. Ali said they were rented. Mr. Rajeshkumar asked when the leases will end? Mr. Ali replied that Unit 215 will end next month, and become affordable, so there will be four one-bedroom affordable units. Mr. Rajeshkumar asked, if the lease expires next month for #215, what will happen if the tenant wants to stay? Mr. Ali replied that they would have to wait for two of the units not to renew their leases. Mr. Rajeshkumar opined that some people will want to stay, and asked Mr. Ali how he will keep track of this, as all the nine one-bedroom units w/den are rented; he asked how will it be monitored that the units become affordable that are supposed to do so? Mr. Olson asserted that, once MHP signs off on the 21 affordable units, it has to be done. Mr. Ali asserted that, MHP is monitoring that situation, and he said that as soon as the units are vacant, they will become affordable, and said that Peabody Properties was working on it already.

Mr. Femia asked when the next affordable unit will be vacated so that it can become market-rate? In response to a question from Mr. Rajeshkumar, Mr. Ali replied that, out of the five one-bedroom units without den, all were rented, and four were affordable, one market-rate. Mr. Femia noted that, when one of those affordable units is vacated, it will become market-rate. Mr. Femia noted that Unit C215 will become affordable, and asked Mr. Ali, out of the other eight one-bedroom units w/den, which lease will expire next? Mr. Ali responded that most of the units get rented in December, so most will be due for renewal by February. Mr. Femia asked Mr. Ali to send something to the board so that they know when C215 and the next one after it become affordable. He noted

that, when a unit becomes affordable, it remains that way. Mr. Ali agreed that the 21 units have to be kept affordable, according to the Comprehensive Permit. Mr. Rajeshkumar considered it a loophole that someone has to vacate their unit before it can become affordable and had a discussion with Mr. Ali regarding how long it could take for that to happen.

Mr. Femia then referred to the "Affordable Rental Housing Opportunity" notice, and that the board wants this updated, along with updated rents and income limits. Mr. Ali responded that it cannot be changed until the agreement is signed. Mr. Femia asked Mr. Olson to make sure that the board gets a copy when the notice is updated.

Mr. Femia also asked Mr. Olson, looking at the Comprehensive Permit, if the changes will be incorporated into the original document? Then Mr. Femia added up the total number of affordable units; they were (3) one bedroom without den, (2) one bedroom w/den, (14) two-bedroom, and (2) three-bedroom, totaling to 21 affordable units.

Mr. Rajeshkumar then noted that the changes to Building A from the plans that were approved were never discussed or voted on. Mr. Olson asked if it was part of the original modification request? Mr. Ali replied that it was, but they did not go into details at the time. Mr. Olson asked the board for comments. Looking at plans of the buildings, Mr. Femia asked if the office, yoga room, exercise room, community room and gym were all in Building A? Mr. Ali said that those rooms were in A, the largest building, but his office was in Building C. Mr. Femia then asked about the "caretaker residence" on the plan; Mr. Ali explained that if the caretaker has to stay overnight he can stay there. Mr. Ali replied to him that it was not an apartment. Mr. Olson asked if it was always there or was it a change? Mr. Ali replied that he submitted it to HAC with the plans, which he gave to the Town, and suggested that the board saw the building many times and could have noticed it. Mr. Femia said that he never saw a caretaker residence on the plans. Mr. Ali responded that he can give up the caretaker residence and leave it as an office.

In response to a question from Mr. Olson, Mr. Ali replied that there is a caretaker office in Building C, and Building A has the leasing office. He explained that there might be more late night calls for emergencies after they're open several years. In response to a question from Mr. Femia, Mr. Ali replied that the leasing office is open until 4:30. (Mr. Femia and Mr. Rajeshkumar both remarked that they did not see any of this in the paperwork before).

Mr. Olson continued, that, in the board's purview this evening, were changes to the Amended Restated Comprehensive Permit; the board could add language for "Caretaker Office". Mr. Femia, showing Mr. Ali the ground floor plan for Building C, asked where the caretaker would sleep? Mr. Ali pointed out that there is a shower in the bathroom if he needs it, but said that he could take that all away if the board wanted. (Mr. Femia remarked that Mr. Ali keeps adding things to the plans that were never agreed upon; Mr. Rajeshkumar asked if the Building Inspector approved that?) Mr. Femia commented to Mr. Ali that the caretaker could be on site 24/7, and would need a shower, kitchen and bunk to sleep, but that the problem was that Mr. Ali keeps adding things that no one knows about, that he wished that these things were done in the beginning and that Mr. Ali waited until the project was almost completed and the units rented to inform the board. Mr. Femia commented that it was frustrating. He also commented that the project has existed since 2004, yet there are still issues and opined that it all should have been done.

Mr. Femia then pointed out to Mr. Olson that the plan dated May 5, 2018 was different from the latest dated 6/28/18, in that stairs were moved and the lobby was larger; he also noted that, in Unit C101, that there were two bedrooms on the May plan, but on the June, 2018 plan, there is one bedroom w/den. He wanted to know when that changed, and if it was rented as a two-bedroom unit? Mr. Ali replied that it was mistakenly marked as a two-bedroom, and that it is a one-bedroom unit w/den, with a glass door which gives no privacy.

Mr. Olson responded to Mr. Femia that he acknowledged his comments, and agreed that issues continue to emerge, but, regarding Mr. Ali's requests for modification, the board has to decide whether or not there was a legal basis for not granting the modifications.

Mr. Femia responded, that it was very important to him that he did not want those nine apartments w/den becoming two-bedroom units, and they were able to work this out, and that the board had issues with there being only one one-bedroom without den unit being market-rate, but now there are 7 market-rate and 2 affordable units out of the one-bedroom w/den units. He said that Mr. Ali now wanted one one-bedroom with den to become market rate, so he added one more affordable unit (he then discussed what the changes would be – six one-bedroom w/den market, three one-bedroom w/den affordable, and the one-bedroom units w/o den at

one market-rate and four affordable, with an increase of three affordable units). Mr. Femia suggested that they could make the caretaker apartment into a studio, with a small kitchen and bath; Mr. Rajeshkumar commented (jokingly) that it would soon become a one-bedroom apartment.

Mr. Femia then expressed to Mr. Olson (both looking at the plans), that, from the 5/5/18 plans, a one-bedroom w/den unit was shown on the 6/28 plans as a two-bedroom unit. Mr. Femia then asked Mr. Ali if, out of the nine one-bedroom units with den, there are handicapped-accessible units? Mr. Ali responded that he thought there were five accessible units. In response to Mr. Olson, Mr. Ali replied that the accessible units are on the first floor or in the basement. After Mr. Femia showed him the building plan, Mr. Ali noticed that there were two accessible units on the second floor.

Mr. Femia then pointed out to Mr. Olson on the plan dated 6/28/18 that the plan of 5/5/18 showed the staircase in one location, and so does the 6/28 plan. Mr. Ali responded that it was confusing because the stairs were moved when the building lost the top floor. While Mr. Femia and Mr. Olson looked at the plans, Mr. Femia asked Mr. Ali where the custodial rooms were located and he told him where they were. Mr. Ali also clarified that the basement was Level 1 (as it had a walk-out), and the first floor was Level 2, and second floor Level 3. Mr. Femia then pointed out to Mr. Olson how one plan showed a two-bedroom unit, which on the other plan was a one-bedroom w/den. He commented that he agreed with Mr. Rajeshkumar, and thought that the board did not pay enough attention to changes as the construction was going on, but Mr. Rajeshkumar opined that the Building Inspector was responsible. Mr. Femia described how things were moved around, and that the one-bedroom w/den units were never discussed or they would have been in the Comprehensive Permit. Mr. Ali asserted that he discussed that with the Building Inspector and the architect, and that the Building Inspector approved it. Mr. Rajeshkumar then responded to Mr. Ali that it was not his first project, and that he knows what needs to be done, and said that he should not blame the Building Inspector as he was going by Mr. Ali's documents.

(The board then discussed what to do next). Mr. Olson then commented to Mr. Ali, that on the most recent plan dated 6/28, the caretaker residence is on the ground floor. Mr. Ali explained that it was labelled as an office before, otherwise he would have 81 units, and explained the process he went through. He then said that he wanted to end this issue, and noted that the Town will obtain one extra unit. Mr. Olson then asked the board if there were any other issues besides this caretaker unit? Mr. Femia asked if Unit C102 was rented as a two-bedroom unit? On the new plans, Mr. Ali replied that it is a one-bedroom w/den. Mr. Rajeshkumar suggested leaving the caretaker unit as an office. Mr. Ali added that, if someone has to stay overnight there and he has to come back before the board, he will do that.

With no further comments, Mr. Olson proposed amending the Comprehensive Permit, where the caretaker room on the ground floor will be used as an office only and caretaker room, but not as a residence. He added that the Comprehensive Permit will state that there are 80 units in total, not 81, and that one will not be a residential unit; Mr. Ali agreed.

Mr. Olson then asked Mr. Ali if there were any other changes from the May 2018 to June 2018 plans? Mr. Ali responded that he wanted the board to vote that Unit 100 has to be a caretaker room and office, not a residence. Mr. Femia and Mr. Olson then looked at the plans, clarified the two-bedroom and one bedroom w/den discrepancies, and tried to match up the units on both sets of plans. They asked Mr. Ali to go through the plans with them, and determine the total number of units of each amount of bedrooms for each floor in the building. After counting the top floor units, Mr. Femia determined that there was a total in the building of ten one-bedroom w/den units, 15 one-bedroom without den, and 13 two-bedroom units, whereas the new Permit lists five one-bedroom w/o den, nine one bedroom w/den, and 24 two-bedroom units. He and Mr. Olson showed Mr. Ali that the latest plan shows ten one-bedroom w/den and not nine.

Mr. Femia then noted that the counts of bedrooms did not agree between the two sets of plans (5/5 and 6/28/18), and he wanted to continue this discussion until the board obtained accurate counts in Building C. Mr. Rajeshkumar agreed with him. Mr. Ali commented that he will have to go to HAC, as he wanted to work with the board but thought they were giving him problems. Mr. Rajeshkumar responded that none of them (including Mr. Ali) could read the plans so it was not the board's fault. Mr. Olson asked Mr. Ali if he knew what happened to the count? Mr. Ali replied that it should be nine one-bedroom with den units and there was probably a mistake made. Mr. Olson instructed him to send the board corrected plans, and hopefully a full board will be present at the next meeting to discuss this. Mr. Ali opined that this was reasonable. He added that he will also change the label to the caretaker residence; he suggested calling it "office and maintenance room". Mr. Ali responded to Mr. Rajeshkumar that he would have to return to the board if it turns out that someone has to stay over there. He

added that he would send the corrected plans to Town Counsel and Ms. Goldstein (for distribution to the board). Mr. Femia suggested that the Chair contact Town Counsel and tell her the situation; when Mr. Ali sends the corrected plans to the board, the board should obtain her opinion on the next move. Mr. Ali asked if they could meet prior to the October 18 scheduled meeting date? Mr. Femia mentioned dates of Columbus Day and the Town Meeting as dates which cannot be used for a meeting. (Mr. Rajeshkumar and Mr. Femia then commented to Mr. Ali that he should have clean plans, they commented on how many times the plans have been changed, and that the room counts changed from May to June; Mr. Ali tried to explain why there were so many changes made).

So, Mr. Femia made a motion to table this discussion to the next meeting, pending corrected plans. Mr. Rajeshkumar seconded. All in favor. Mr. Olson reminded Mr. Ali that this was still an open item, and that he would look into whether or not they will meet before October 18; he will reach out to Town Counsel, and reminded Mr. Ali to get the information to the board as soon as possible as they all wanted to resolve this matter. Mr. Ali added that he did not want to argue about the past of this project. (Mr. Femia then asked him if the work on the stockade fence was done? Mr. Ali replied that it was not. Mr. Rajeshkumar suggested that they talk about this later, as the discussion had been closed).

Miscellaneous Mail and Paperwork:

One piece of mail was notification of a Public Hearing in Clinton, MA. Mr. Femia questioned why the ZBA would get that? Mr. Rajeshkumar offered to find out.

Also, the board received an update on the Dr. Tashjian violations at 363 Prospect Street court situation. Mr. Olson said that he would follow up with the Town Administrator to see if Bentley Herget (previous Building Inspector) was going to court. Mr. Rajeshkumar offered to find this out.

Next Scheduled ZBA Meeting: Thursday, October 18, 2018, at 7:00 p.m.

ZBA Monthly Financial Report:

Mr. Olson read over the report.

With no further business to discuss, Mr. Femia made a motion to adjourn at 8:27 p.m. Mr. Rajeshkumar seconded. All in favor.

NEXT MEETING **Thursday, October 18, 2018, 7:00 p.m.**

MOTION TO ADJOURN

Motion Originator **Mr. Femia**

Motion Seconded **Mr. Rajeshkumar**

Time of Adjournment **8:27 p.m.**

Signatures

Nathaniel Orciani

A large, stylized handwritten signature in black ink, likely belonging to Nathaniel Orciani, is written over the printed name.

Submitted by: Toby S. Goldstein

Toby S. Goldstein

Date Submitted: 10/18/18