



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, July 20, 2023/7:00 p.m./THIS MEETING WAS HYBRID, HELD IN PERSON AND HELD REMOTELY VIA ZOOM.

Members Present

John Benson (Vice-Chair) (PARTICIPATED REMOTELY VIA ZOOM), David Femia (Clerk), Nathaniel Orciani, Barur Rajeshkumar, Christopher Mitchell (Associate Member) and Secretary Toby Goldstein

Members NOT Present

Christopher Olson (Chair), Andrew Feland (he was available for the board, in the audience) and Mark Wyatt (Associate Members)

Invited Guests

Alex Weisheit (Town Counsel) and George Tignor (Building Inspector)

Welcome – Call to Order

Time: 7:05 p.m.

Approval of Previous Minutes June 15, 2023

Motion Originator: David Femia

Motion Seconded: Nathaniel Orciani

Treasurer – Financial Report Not discussed at this meeting.

Motion to Accept N/A

Seconded N/A

At 7:05 p.m., Mr. Benson called the July 20, 2023 ZBA meeting to order and named the members who were present; Mr. Benson sat in as Chair (on Zoom) for Mr. Olson, who recused himself. (As the meeting was opened at the scheduled time for the public hearing regarding 57 Goodale Street, Mr. Benson verified with the board that there was no objection to opening the public hearing before voting on the minutes, which was scheduled for 7:00).

Public Hearing, to act upon the petition of Justin Gabriel for Administrative Appeal of an Enforcement Order issued by the Building Inspector, George Tignor, ordering the petitioner to fully demolish and remove the garage structure on his property at 57 Goodale Street, West Boylston, MA:

(Thomas Orr represented for the petitioner; Alex Weisheit was present as Town Counsel). (Mr. Femia read the public hearing notice aloud, then Mr. Benson asked Mr. Orr to give his presentation). Mr. Orr opined that an Enforcement Order issued by George Tignor, Building Inspector, on 4/27/2023 is fundamentally unfair and inequitable, so Mr. Gabriel filed this administrative appeal of that Order. Mr. Orr asserted that the Enforcement Order would require demolition of the garage structure in light of certain undisputed facts:

1. A valid building permit was issued by the Town to build a garage.
2. Mr. Gabriel began construction of the garage pursuant to the building permit.
3. He was subsequently ordered by the Town to stop construction of the garage.
4. Mr. Gabriel stopped construction in response to the Town's directive.
5. The Town and Mr. Gabriel litigated the issue of whether the garage constituted an accessory use.
6. Mr. Orr claimed that the Town waived enforcement of demolition when it failed and refused to litigate that issue in land court.

Mr. Orr asserted that the standard before the court is clear and case law is clear, referring to Delprete vs Rockland ZBA which was referenced in the petition paperwork; he asserted that the court considered this a two-fold issue:

1. If the structure violates local zoning bylaws
2. What to do with the structure that had actually been built

He asserted that the court laid out three clear elements and opined that the board should consider:

3. Substantial undue hardship on Mr. Gabriel in the form of economic waste of demolition of the garage pursuant to a valid building permit.
4. Injury to public interests; Mr. Orr asserted that the Town had the opportunity to litigate this in Land Court but did not actively litigate or pursue at trial.
5. Exhaustion of administrative remedy, as the enforcement order was issued 13 days after Mr. Gabriel dismissed his appeal in Land Court.

Mr. Orr noted that the Land Court matter was referenced in the Enforcement Order, and explained that last fall the Town filed a lawsuit through the Building Inspector seeking the power of preliminary injunction related to purported violations of the Town bylaws relative to unregistered vehicles. Mr. Orr opined that the suit filed was meritless and dismissed in large part because Mr. Gabriel did not violate the zoning bylaws and the vehicles were registered. He opined that there was no public danger from the structure itself. He asserted that they went through litigation and in 5+ years there was no attempt to have the structure demolished. He noted that Mr. Gabriel went through the ZBA, then litigation in land court and demolition was available as a remedy but not pursued. Mr. Orr again referenced the Delprete case and claimed that the three items mentioned were standard for any trial court to apply, and he opined that it is practical and fair to allow the garage to remain. Mr. Orr added that Mr. Gabriel did not complete the structure because of orders by the Town. He then referred to a comment from the Conservation Commission, wanting to know where runoff water from the roof would go, and he replied that there is drainage around the perimeter of the structure.

Mr. Femia then discussed some things that were in the letter to Town Counsel informing him of the current administrative appeal that bothered him. One was that Land Court did not address the question of whether the garage should be demolished (he asked Mr. Weisheit about this, and if Land Court ever addressed demolition of the building). Mr. Weisheit responded that this was a separate matter not litigated yet (Mr. Benson suggested that they direct questions to the petition heard this evening). Mr. Orr responded that it was not actively litigated during the Land Court matter but was mentioned at the end of it, and opined that it had potential as a remedy. Again he referred to Delprete, which referenced economic waste and substantial hardship, and reiterated his opinion that the Town had the opportunity to pursue and litigate the issue of demolition but chose not to do so. Mr. Weisheit responded that he agreed with Mr. Orr that it was not expressly addressed in Land

Court, but disagreed that the Town waived the ability to pursue enforcement. He opined that it would be premature to litigate before determination of whether it is legal for the structure to be where it is, and ultimately Land Court ruled that it was not. He noted that it was determined that it was not lawfully constructed and not an allowable accessory use, and determined that it was detrimental to the neighborhood. He added that, now that those determinations have been made and once the appeal was dropped, the Town's ability to decide if the structure needed to be demolished had become ripe. Mr. Orr responded, asserting that Town Counsel stated that the Town pursued the issue of whether the garage was a lawful accessory structure without looking at the ultimate disposition of it.

Mr. Benson asked why the Town pursued whether the structure was lawful, if the Town did not intend to demolish it? He asked Mr. Orr if the petitioner expected the Town not to take action? Mr. Orr replied that they would have expected the Town to have the court affirm that determination and seek ultimate relief. (Andrew Feland, ZBA Associate Member who was in the audience, then attempted to ask a question, and Mr. Benson instructed that they will proceed in an orderly fashion, taking questions from the board, then from the public). Mr. Rajeshkumar then discussed how the petitioner obtained a building permit on 10/11/2018 and this was appealed within the appropriate time period, and asserted that Mr. Gabriel took the risk to do building of the garage even before the ZBA hearing for administrative appeal was scheduled. Mr. Orr asserted that the petitioner had a valid building permit. Mr. Rajeshkumar responded that Mr. Gabriel did building work during the appeal period. Mr. Orr responded that he disagreed and asserted that the work was pursuant to a valid building permit. Mr. Rajeshkumar reiterated that the petitioner took the risk of building in the appeal period after the building permit was issued. (Mr. Orr disagreed with this). Mr. Femia continued, that when this took place, he was a ZBA board member and heard all the facts. He mentioned that the vote was 4 to approve and 1 not to approve (this was his vote). He believed that the building permit was lawfully issued and still believes it. He opined that it is difficult that language was not put into Land Court's decision to say that the garage should be demolished, and he said that he was torn.

(With no further comments or questions by the board, Mr. Benson then opened the hearing to public comment). First to speak was Anthony Nasuti of 63 Goodale Street. He asked if Mr. Gabriel's property is residential or commercial? He explained that he had seen military-grade vehicles and what appeared to be weapon cases in and outside of the garage; he opined that it is one thing if it is commercial property, but not appropriate if it is residential, and opined that it would appear to be more of a business than a garage. Mr. Benson responded that he did not think that issue was specifically before the board and he was not sure how it applied to the issue at hand. Mr. Nasuti responded that he opined that this building will obviously be used for commercial use, reiterating that the structure was storing military-grade vehicles and weapon cases, and considering the work that Mr. Gabriel does (he did not specify the work), this connects the work with his house. He asked, if this is a residential area, why does a commercial-grade building need to be there?

Mr. Benson replied that the ZBA addressed this before and it was decided in court that it was not lawful use to construct the garage structure, and it was decided in court that it was not a lawful use, so that use is not the issue right now before them. He noted that the court determined that the building permit shouldn't have been issued and that it was not a lawful accessory use; then the appeal was filed and later dropped. He asserted that the issue now is if the garage should be demolished, and the issue today is that the Building Inspector ordered the petitioner to demolish the structure and he is appealing that order. Mr. Mitchell opined that it seemed simple, that if something illegal is built, it should be removed, and there should be consequences if it is not legal. Mr. Benson continued, that in fairness to the petitioner, the petition claims that the construction was lawful because a building permit was issued, but the ZBA later determined that the building permit should not have been issued and the petitioner asserted that the initial construction was pursuant to a lawful building permit and that the ZBA acted after the building permit was issued. Mr. Orr opined that, in general, this was a fair summary, but that the key was the building permit was issued earlier, Mr. Gabriel built the structure pursuant to that permit and that the focus today is the Enforcement Order from the present Building Inspector that is ordering the petitioner to

demolish the structure (he read from a letter referenced earlier). He reiterated that the court did not order the demolition.

Next in the audience to speak was Andrew Feland of 101 Central Street (also Associate Member of the ZBA). He noted that he was also present at the original meeting of Mr. Gabriel with the ZBA, and said that, when the board voted, the garage was not at all near completion, and noted that Mr. Gabriel could have stopped construction at that time but chose to continue building after the board voted. He added that Mr. Gabriel is coming back to the board now but Mr. Feland opined that there are no new arguments right now that differ from when he voted on the board. (Mr. Feland and Mr. Orr then had a discussion about the petitioner continuing to work after the ZBA ordered him to stop. Mr. Orr claimed that Mr. Gabriel stopped work upon the original order, but Mr. Feland claimed that he saw construction continue after the board voted for him to stop. Mr. Orr claimed that Mr. Gabriel enclosed the structure for structural integrity so that there would be no danger to the public. Mr. Rajeshkumar, acting as Chair in-person as Mr. Benson was on Zoom, used the gavel and asked them to stop the discussion, and Mr. Benson asked them to stop as they cannot have everyone speaking at the same time). Mr. Orr then requested to continue the public hearing to obtain more information as to what was completed and when in order to clarify any confusion.

Next to speak was Melissa Silva of 55 Goodale Street; she had filed with the ZBA in November of 2018, appealing the building permit issued to Mr. Gabriel previously. She asserted that she had the timeframe of what happened with the structure, and gave a summary of the timeline. She asserted that the structure was a frame initially and ruled dangerous so Mr. Gabriel enclosed it. She asserted that Judge Piper in Boston said that a permit should not have been issued in more than one court at a time and that it should go back to the Town. She claimed that, while in litigation, plumbing and electric conduit were installed in the garage. Ms. Silva claimed that the Town illegally moved a pin and resurveyed the property to meet setbacks and that the present Building Inspector, George Tignor, did not know that this happened; Ms. Silva claimed that he would not have known if she was not home at the time. She added that, when the original Cease and Desist order was issued and there was just a frame present for the garage structure, Mr. Gabriel continued to work on it.

Next to speak was Tim Shea of 55 Goodale Street. He noted that, when the initial building permit was issued, he worked for the Town, and asked Mr. Lund (Building Inspector at the time) if he could see that the plan for the structure was revoked immediately. Mr. Shea said that, as far as he knew, that first building permit was revoked. He questioned where the second building permit came from? He also mentioned that, in West Boylston, 120 feet of frontage are required, but asked, with zero frontage when Mr. Gabriel first came before the board, why was the building permit issued?

Mr. Tignor responded, that when he came to work at the Town, the building permit was revoked (this was explained by Building Inspector Chris Lund) and that Mr. Gabriel thought that frontage was measured at the center of the cul de sac. Mr. Tignor asserted that he said "no" to that. Mr. Tignor noted that the petitioner then changed the plan, and he ordered him to survey the property again to determine exactly where the pin should go. Mr. Orr responded, opining that the aforementioned comments underscored the significance of continuing the public hearing in order to obtain more evidence, and he opined that the Enforcement Order by Mr. Tignor is unfair and if the board wants to rule the hearing should be continued to take in more evidence. In response to Mr. Benson, Mr. Orr explained that they needed more evidence in front of them relative to the structure and public comments, the timing of permits and when construction actually began and continued to take place.

(Mr. Femia and Mr. Orciani then made and seconded a motion to close the public hearing, but Mr. Benson responded that, before doing this, the board needed to take up the request for a continuance; Mr. Femia and Mr. Orciani withdrew the request to close the hearing). In response to a question from the board, Mr. Orr said that they would need a couple of weeks to continue; Mr. Femia noted that the next scheduled meeting was August 17. Mr. Weisheit added that they needed to be sure that the continuance would fall within 100 days of filing of the petition, but the applicant can extend the date. The board members and Mr. Orr then determined that August 17

would be within 100 days of the filing date, and all parties agreed to continuance of the public hearing to 7:30 p.m. on August 17 (as there was already a continued public hearing scheduled at 7:05 p.m.). Mr. Femia then made a motion to continue the public hearing to 7:30 p.m. on August 17, 2023. Mr. Rajeshkumar seconded. Mr. Benson took a voice vote:

Mr. Rajeshkumar – “yes”

Mr. Femia – “yes”

Mr. Mitchell – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

The vote was 5 “yes”, 0 “no”, therefore the public hearing was continued to August 17, 2023 at 7:30 p.m. Mr. Femia asked Mr. Orr to please give Ms. Goldstein any documents at least a week before the meeting so that all parties can review them.

Other Business:

Minutes of June 15, 2023 Meeting: After review of the draft minutes prior to the meeting, Mr. Femia made a motion to accept the minutes as written. Mr. Orciani seconded. Mr. Benson took a voice vote:

Mr. Rajeshkumar – “yes”

Mr. Femia – “yes”

Mr. Mitchell – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

The vote was 5 “yes”, 0 “no”, therefore the minutes were accepted as written.

ZBA Treasurer’s Report – Mr. Benson suggested that the board save this topic until the August meeting.

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports:

Signatures Required by Accounting Department – the board members decided to allow any full board member to sign paperwork such as invoices and Ms. Goldstein’s timesheets, and the members who were present signed the form. It will be left in the ZBA mailbox for the remaining full members to sign.

Next Scheduled ZBA Meeting – Thursday, August 17, 2023

With no further business to discuss, Mr. Femia made a motion to adjourn the meeting at 7:50 p.m. Mr. Rajeshkumar seconded. A voice vote was taken by Mr. Benson:

Mr. Rajeshkumar – “yes”

Mr. Femia – “yes”

Mr. Mitchell – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

The vote was 5 “yes”, 0 “no”, and the board adjourned at 7:50 p.m.

Submitted by: _____

Date: _____

Reviewed by: _____

