



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

January 28, 2016

Chair: Kristina Pedone

Members Present: Kristina Pedone (Chair), John Benson (Vice-Chair)(came in at 7:25 p.m.), David Femia (Clerk), Barur Rajeshkumar and Charles Witkus .

Others Present: Daniel Cronin (Associate Member) and Secretary Toby Goldstein.

Members Absent: Paul Hennessey (Associate Member).

At 7:15 p.m., Mrs. Pedone called the meeting to order. She read the names of members present. (She called associate member Daniel Cronin up to designate him as a full member as Mr. Benson was absent at that time). Mrs. Pedone stated that the first item to be discussed on the agenda was the public hearing for 69 Malden Street.

Public Hearing, Franklin and Margaret Wolverton, Petition for Special Permit for Accessory Apartment at 69 Malden Street:

(Mr. and Mrs. Wolverton represented). Mr. Femia began by reading the notice of the public hearing that was sent to abutters and all the Town boards. Mr. Wolverton read aloud his, his wife's, and son's names (Glen Wolverton, the son who was planning to move into the home with his wife, and Mr. and Mrs. Wolverton would then live in the accessory apartment). Mrs. Pedone summarized that Mr. Wolverton was requesting a special permit to create an accessory apartment, and then asked if there was not one there already? Mr. Wolverton replied that they are not requesting any remodeling or construction (he showed the board members a map of the inside of the house). He explained that there is an existing kitchen, den and master bath that they plan to call an accessory apartment, and his son and his wife would occupy the remainder of the first floor, and the second floor. He continued that, for the accessory apartment, there would be a kitchen, den, laundry, bedroom, full bath, and conversion of a closet to a half bath. He asserted that one bedroom is required for an accessory apartment, with a limit of within 700 square feet for an accessory apartment allowed in the bylaws. Mr.

Wolverton asserted that the only changes are permission to designate the area as an accessory apartment so that the son can convert the den to a second kitchen.

In response to a question from Mr. Femia, Mr. Wolverton responded that the second kitchen did not exist yet and his son was speaking to a contractor about it. Mr. Rajeshkumar asked him about the parking, and Mr. Wolverton showed the board a drawing which is on file with the Registry of Deeds, showing the house and long driveway with a turnaround and two-car garage with off-street parking. Mr. Rajeshkumar then asked about the septic system and Mr. Wolverton responded that it needed a Title 5 upgrade (the property owner, Allan Peak, then joined the Wolvertons to speak).

Mrs. Pedone asked Mr. Wolverton if he was not the owner of the property? Mr. Wolverton and the board discussed documents that they had, the petition stating that Mr. Peak was the owner, a letter from Mr. Peak giving the Wolvertons permission to file the petition, and an Affidavit of Residency, where the Wolvertons swore that they would occupy the residence if the permit was granted (these were requested of Mr. Wolverton prior to the meeting). Mr. Wolverton said that closing on the property was scheduled for February 12. Mr. Peak explained that the upgraded septic system would be taken care of before closing and was approved by the Board of Health pending the upgrade. Bob Barrell of the Board of Health stated that he had the septic plans and revised septic plans with him, and said that they were reviewed by their engineer and that they meet all Title 5 requirements for a five-bedroom home; he had no doubt that it will be approved.

(At 7:25 p.m., Mr. Benson arrived and sat in the audience; Mr. Cronin continued to sit for the public hearing). Mr. Femia asked Mr. Barrell if the applicant needed to wait to proceed until the Board of Health signs the septic plans? Mr. Barrell responded that he did not see why the Board would not approve them and considered it a formality, but supposed that they should not begin in case the Board does not approve.

Mr. Witkus then asked Mr. Wolverton if he intended to will the property to his son if something were to happen, in which case he could turn the house into a two-family and sell it as a two-family? Mr. Wolverton responded that he has no intention of turning it into a two-family house, only a single-family house with two kitchens.

(Mrs. Pedone then opened the discussion to public comment). David Hennessy of 89 Malden Street asked if there would be a separate entrance to the outside from the accessory apartment? Mr. Wolverton replied that there would be one. Mr. Hennessy believed that this would make the house a two-family residence; he said that, one day, someone could try to sell the house but won't be able to because it's difficult to sell a house with two kitchens unless it is

a two-family house. He asserted that the property value in the area would go down, and if the need is for a two-family house, it is not appropriate for this property.

Beverly Goodale of 195 Crescent Street agreed with Mr. Hennessy. She added that she assumed that there would be two entrances. Mrs. Pedone asked Mr. Wolverton to show her the two means of egress. Ms. Goodale continued, asking him if there are two separate units? She asked him where he would spend the day if there will be no living area for him? Mr. Wolverton responded that the bylaws restrict the space to 700 square feet so there is not a lot of living space, and to add a living room would exceed the limit. Ms. Goodale asked him if he would be confined to three rooms? Mr. Wolverton responded that there is a doorway to the stairway and the shared basement, and he could move between them. Ms. Goodale then asked him about egress in the front as well and if he is going to share space with the downstairs? He replied "yes." Ms. Goodale asserted that this will have the feeling of a two-family house, and when Mr. Wolverton leaves it, other people won't want to share the basement with anyone if it is not with family; she thought that the two kitchens and all the baths will be a problem, and there are still septic issues. Mr. Barrell responded that his engineer said that the septic meets code.

Next, Mr. Femia read aloud a letter that the board received from another abutter at 66 Malden Street, who was not able to attend the meeting but wanted to submit comments (letter on file). The letter questioned if the accessory apartment would be subordinate as required, and if the residence could become a rooming house with the owners living in the accessory apartment? The resident expressed concerns about various parts of Section 3.4 being violated. The resident commented that she was on the ZBA for 15 years and they had issued with zoning decisions in the past and lack of zoning enforcement causes concerns. Mrs. Pedone wanted to clarify for those present, stating that the Building Inspector is the zoning enforcement officer; the ZBA is not.

(With no further questions or comments, Mrs. Pedone closed the discussion to public comment, and then asked the board for their comments). Mr. Femia commented about the people who were against the request, stating concerns regarding the applicant possibly selling the house with two kitchens, but said that, according to the bylaws, a new owner would have to re-file for a special permit if they want to have the accessory apartment.

Mrs. Pedone mentioned the part of the bylaw that stated one purpose of an accessory apartment being for people as they get older so that they can remain in their homes, and asked Mr. Wolverton if he wanted to buy the home to divide it so that his son and his wife could have their own unit? Mr. Wolverton replied that the purpose of their request is, as they get older and are less able to function, that their son and his wife will be closer to them to help them. Mr. Hennessy then interjected that this was not a situation where they are converting their

home, but they are moving from another town and have a choice about where to move. He also commented that changes being proposed are expensive, and things could happen, for example, if they default on the mortgage the bank would have trouble selling the house, and did not think that the board considered these concerns.

(With no further questions or comments, Mrs. Pedone asked for a motion to close the public hearing. Mr. Femia moved to close the public hearing. Mr. Rajeshkumar seconded. All in favor.

(Next, the board was ready to vote). Mr. Femia read the motion for the vote, to authorize a special permit for an accessory apartment, located at 69 Malden Street, contingent to sale of home and septic replaced to Franklin and Margaret Wolverton. Mrs. Pedone explained that a “yes” vote agreed with the special permit request, contingent on the Wolvertons purchasing the house and that the septic system will be replaced. The vote was as follows:

Mr. Witkus – “no”
Mr. Femia – “no”
Mrs. Pedone – “no”
Mr. Rajeshkumar – “no”
Mr. Cronin – “no”

(With (5) “no” votes, the request did not pass; Mrs. Pedone thanked Mr. Cronin and stated that Mr. Benson will sit on the board for the public hearing that was to follow at 7:45).

Public Hearing, Edmund Atchue, Petition for Special Permit, 38 Central Street:

(Mr. Femia read the notice of the public hearing, which was for a special permit for the construction of one room above an existing two-car garage; representing was Mr. Atchue).

Mrs. Pedone asked Mr. Atchue to state his name, and she clarified that his request was for a room above his garage. He explained that he needed the room because he had a business. Mr. Benson asked him if there would be any signs for the business? Mr. Atchue replied that there would not be any signs. Mr. Benson asked him about the nature of the office. He responded that there would not be any walk-in traffic, just an office and his bookkeeper. Mr. Benson asked if there would be any clients? Mr. Atchue replied that occasionally someone might buy an air filter, and added that they have a word of mouth business and have been in business since 1964; the business was at 308 West Boylston Street, then was changed to One Alcazar Ave. In response to questions from Mr. Benson, Mr. Atchue said that he had an office in the aforementioned locations, and the only employees were the bookkeeper, himself, and three technicians.

Mrs. Pedone asked him about vehicles, and Mr. Atchue responded that the technicians take the vehicles home with them; one spare vehicle is left on the premises to use in the event of repairs

to one of the vehicles. In response to questions from Mr. Rajeshkumar, Mr. Atchue said that he has a commercial refrigeration business, and that there are possibly hazardous substances in the trucks, but they are gone all day and at the technicians' homes at night.

Mr. Femia asked Mr. Atchue about who lives at the house, and Mr. Atchue responded that there are two families. Mr. Femia asked him if he was converting the attic space, and Mr. Atchue responded that he will not do that, but wants to take the two-car garage and put a 12' by 24' office in the space above the garage. Mr. Femia verified that there would be no signs there.

In response to a question from Mrs. Pedone regarding hazardous materials, Mr. Atchue replied that the only thing that could be classified as hazardous would be an acetylene torch used to solder pipes. In response to questions from Mr. Rajeshkumar and Mr. Benson, Mr. Atchue responded that the garage is under construction, separate from the rest of the home, and the area that he wants above the garage will be used for storage of parts and stock, which he now stores in the aforementioned building, which he said that he would be vacating. He said that there would still be room for two vehicles to park in the garage. In response to questions by Mr. Witkus, Mr. Atchue said that there would be a bathroom downstairs, with the business downstairs and the office upstairs. Mr. Atchue explained that the storage at the garage would be at entry level, and that all of their work is done in the field, with no workbenches. Mr. Benson asked him if the design for this proposal will look like other buildings in the area? Mr. Atchue replied that it will look like a two-car garage.

Mrs. Pedone noted that the building permit to construct the garage was already approved, so that what is before the board is not only the appearance of the structure, but if the applicant is just to use the area for an upstairs office, he would want zoning for having a home business. Mr. Rajeshkumar added that there will be storage also and parking of cars. Mr. Benson commented that there is already a two-family home there, only the garage is not built. Mr. Femia asked Mr. Atchue if he wants the special permit before constructing the garage? Mr. Atchue replied that the garage is being constructed at this time. Mr. Witkus disagreed with that, believing that Mr. Atchue would not be able to withstand the heat, and thought that there was more to the construction than just an office and that the applicant was asking for a business to be added to a small garage.

(Mrs. Pedone next opened the hearing to public comment). Marc Frieden of Planning Board read from a letter from Planning Board regarding the applicant's project. It mentioned that Planning Board reviewed it on 1/13/16; it discussed allowances of bylaw Section 3.5 and several areas where Planning Board asserted that Mr. Atchue was in violation of parts of Section 3.5.

In response to questions from Mr. Benson regarding the size of the office and of the garage and its placement, Mr. Atchue described how the garage will be constructed. Mr. Benson asked how Planning Board envisioned the calculations? Mr. Frieden replied that the entire upstairs of the garage is the business part, and the size of the business would be compared to the entire house except that it is detached from the house. According to the bylaws, Mr. Femia commented, the house is a dwelling, and asserted that if the garage is attached to the house, it is different than if the garage is a separate entity.

Mr. Benson then asked Mr. Frieden if the floor of a garage is counted as living space? Mr. Frieden replied that, as with a basement, it is not counted as living space. Mr. Rajeshkumar commented that it will not be used as a garage, but for storage. Mrs. Pedone asked Mr. Atchue if the garage will be used for vehicles? He replied that it would be. Mrs. Pedone and Mr. Rajeshkumar questioned how vehicles could be parked in the garage if it is used for storage? Mr. Frieden and Mr. Benson discussed the section of the bylaw where it states that a home occupation must take up less than 25% of the size of the house and it might fit in that range, but it would be detached from the house. Mrs. Pedone mentioned that Mr. Atchue already had a building permit for the garage, so that issue is irrelevant. Mr. Frieden responded that the question is how the applicant wants to delineate the area. Mr. Rajeshkumar commented that there is no problem in parking two cars in the garage, but that the residents will not use the garage and the applicant will be storing and not using it as a garage. Mr. Atchue responded to a question from Mr. Femia that the garage will not affect the people living in the two-family home. Mr. Femia expressed confusion over the fact that, on the building inspector's form (in the petition), it appeared that the garage was existing, but now the board is finding out that the garage was never there; Mr. Frieden expressed confusion at this, also. Mr. Femia continued that the garage is not part of the dwelling. Mr. Frieden responded that the applicant's intent is not to turn the entire place into a business. Mr. Femia added that, when the property sells, the permit terminates, or if the use ceases for a year, the special permit is not allowed, and a Declaration of Covenants must be filed.

With no further questions or comments from the public, Mr. Femia moved to close the hearing to public comment. Mr. Rajeshkumar seconded. All in favor. Mrs. Pedone excused Mr. Atchue and announced that the board would deliberate.

Mr. Femia read the motion from the vote sheet, to authorize a special permit for construction of a one-room office above the two-car garage (unattached) of a two-family home at 38 Central Street, West Boylston, MA, for which a "yes" vote would accept the applicant's request, and "no" would vote to deny it. The vote was as follows:

Mrs. Pedone – "yes"
Mr. Witkus – "no"

Mr. Femia – “no”

Mr. Rajeshkumar – “no”

(Mr. Benson was still deliberating). Mr. Frieden asked if the applicant can re-apply for a variance? Mr. Benson asked if he would have to wait for a period? Mr. Femia responded that the bylaws do not say if there is a waiting period. Mrs. Pedone suggested that they could give him the opportunity to come back after the garage is built; she said to Mr. Atchue that the board will follow up with him as to whether or not there is a time period required to re-apply.

(Mr. Benson then voted “no”). Mrs. Pedone announced that the vote was four “no” and one “yes” and therefore, the request was denied. (In response to a comment from Mr. Witkus that he thought that the entire board should vote at once, rather one at a time, Mrs. Pedone agreed that they will do that going forward).

Afra Terrace Discussion with the Board of Trustees and Ruane Property Management:

(Andrea Austin of Ruane Property Management represented). Mrs. Pedone verified with Ms. Austin that they were to discuss this evening the outstanding “as-built” plans from the developer. Ms. Austin responded that the builder had not yet submitted “as-built” plans. Mrs. Pedone replied that she had reached out to other boards and there is not yet a complete set of plans, and asked the developer, Iqbal Ali (who was present) if he had them? Mr. Ali replied that he had the complete set of “as-built” plans for Afra Terrace. He mentioned that the Conservation Commission had questions about the retention ponds, and said that he forwarded a copy of the engineer’s letter discussing the capacity of the retention ponds (the ZBA accepted two copies of the “as-built”). Mr. Femia asked Mr. Ali if he sent that to the Conservation Commission? He said that he did not. Mrs. Pedone said that the ZBA will accept the plans and circulate them to the other boards for feedback as to anything outstanding or incomplete, and when all agree upon them as final, Mr. Ali will get a copy. Mr. Ali asked if the Town’s engineer will review and confirm them? Mr. Femia replied that the conservation Commission will do that, and Mr. Benson added that Town Counsel can see them anytime to comment. (Ms. Goldstein was instructed to add Afra Terrace to the agenda for the February 25 meeting (this date was agreed upon rather than February 18), and she will also notify the Town Website of the date change.

Next, Mr. Ali asked the board if the Amended Restated Decision for 94 North Main Street was signed yet? Mrs. Pedone replied that it had been distributed by e-mail to the other board members for comment by all. Mrs. Pedone noted that a public hearing will not be needed to sign the document, and the Secretary will leave it for all members to sign once they have reviewed it.

Mail and Paperwork:

Mrs. Pedone reviewed and signed the above.

Minutes of December 17, 2015 Meeting:

After review of the draft minutes by the board members, Mr. Femia moved to accept the minutes with one correction (typographical). Mr. Rajeshkumar seconded. All in favor.

With no further business to discuss, Mr. Femia moved to adjourn the meeting at 8:38 p.m. Mr. Rajeshkumar seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____