



## TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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### MEETING MINUTES

**April 20, 2017**

Chair: David Femia

Members Present: David Femia (Chair), Barur Rajeshkumar (Clerk), Christopher Olson, Nathaniel Orciani, and Charles Witkus.

Others Present: Secretary Toby Goldstein.

Members Absent: John Benson and Daniel Cronin (Associate Members).

Mr. Femia called the meeting to order at 7:00 p.m. this evening.

#### **Other Business:**

##### **a. Informal Discussion with Iqbal Ali Regarding Planting at 92 North Main Street:**

Mr. Femia stated that he had previously informed Mr. Ali (who was in the audience) that, in January, an abutter on Stillwater Drive questioned the board about plantings that were supposed to be done by Mr. Ali (the developer) in place of trees that were removed. Mr. Femia mentioned that he did not get a response on the status of this after sending emails to Mr. Ali, and he wanted to know about this now. Mr. Ali replied that planting would take place close to the fall, explaining that there was a lot of weeding to be done after siding of the building and with spring or fall being the best times to plant, it would have to be the fall. Mr. Ali verified for Mr. Femia that Building C will be ready for occupancy by September, and that the playground and planting will be partially done by then-he estimated about 60% done-explaining that the bank initially wanted him to complete one building at a time and he would rather finish most of the construction first. Mr. Femia said that he would like Mr. Ali to contact the board in August to let them know the status of the plantings so that the abutters will know. Mr. Ali noted that he will follow the ZBA-approved plan.

With no further comments by the board, the discussion was open to public comment. Bob Holden of 12 Stillwater Heights Drive said to Mr. Ali that it was his understanding that when the trees were cleared that there was supposed to be a buffer zone, an undisturbed area. Mr. Ali replied that they are planting a buffer. Mr. Holden asked him if he is trying to correct the stripped area? Mr. Ali responded, asserting that this is how the plan was approved by ZBA and that they requested that this be put in and that nothing was illegally done with regards to the tree clearing. He said that they will eventually create a buffer. (Mr. Femia instructed Ms.

Goldstein that they would have to go back through the record and see what was said, but for now to leave as is). Mr. Femia reminded Mr. Ali to let the board know in August the status of the planting so that the abutters can be notified.

Next to speak was John Owanisian of 8 Stillwater Heights Drive. He mentioned that, at earlier meetings, it was said that some land was supposed to be untouched, and he recalled previously talking about spring planting and wanted to know if they could set a target date for that? Mr. Ali agreed with Mr. Femia that they could do it by Halloween. Mr. Femia reminded the audience that the board was not forgetting about them.

Mr. Femia continued that local preference was approved by MHP for 92 North Main Street, and that the board needed from Mr. Ali pamphlets on the one, two and three bedroom units so that people can see what they look like, as the lottery needs to be in June (Mr. Ali corrected, June to July). He said that he's working on it and needs to update the paperwork and that he has a three-month window to get it done or else he needs to start all over again. He said that he would explain the plans at a formal meeting. (Mr. Ali opined that the project is making good progress and is going well).

**b. Minutes of March 16, 2017 Meeting:**

After review of the draft minutes by the board members, Mr. Rajeshkumar made a motion to approve the minutes as submitted. Mr. Orciani seconded. All in favor.

**Public Hearing, Phillippe and Judith Chevalier, 250 Maple Street, Petition for Special Permit:**

(Philippe Chevalier and Attorney Donald O'Neil represented). Mr. Femia read aloud the legal notice, and announced the format of the hearing; the board would hear from the petitioner and his representative and ask them questions, then open up the hearing to public comment. He instructed that anyone making a comment must state his/her name and address. (The petition was to request a special permit to reconfigure the lot at the above address so as to accommodate the existing home and an additional home).

Mr. O'Neil stated that the applicant is seeking the special permit under bylaw sections 4.2C and 4.1E. He referred to an opinion letter from Planning Board which questioned how these two sections of bylaw are related. He noted that the minimum lot widths are spelled out in the application submitted, stating that Lot 1 has 100.15 feet of frontage (the narrowest being 100 feet, the .15 resulting from the angle of the lot where it hits the street. Lot 2 would be approximately 107.85 feet at the street, narrowing to 104.7 feet. A Lot 3 measures 120 feet of frontage and 40,000 square feet. He noted that Lots 1 and 2 exceed the minimum square footage required and opined that they are good sized lots. Mr. O'Neil discussed that the bylaw discusses the ability of the ZBA to reduce frontage of the lots to 100 feet, with 40,000 square feet of area. He asserted that all the lots have sufficient frontage to assure safe and adequate access by vehicles, municipal services, and utilities. Also, he said that the driveways for Lots 1 and 2 would be adjacent so there would be no issue with access to the properties. Mr. O'Neil added that the Chevaliers had talked to most of the neighbors and asserted that there should be no objection to the project unless it is expressed this evening.

Mr. Femia then verified with Mr. O'Neil that he received a revised letter from Planning Board (following a first letter). Mr. O'Neil explained that the applicant is requesting reduced frontage, but approves Lot 2 frontage 104.7 feet, the narrowest point; 107.85 would be in excess. He assumed that Planning Board's objection was that Lot 2's frontage is 107.85 feet,

not 104.7. Mr. O'Neil suggested that they could redraw the lot lines, but pointed out that the boundaries on the map are all parallel lines. He said that it would be simpler to approve the narrowest frontage, and at no point do they go less than 100 feet. Mr. O'Neil added that the other criteria such as appropriate location and satisfactory access have been satisfied.

Mr. Chevalier then showed the board the plan of the site; he discussed who did the work. He pointed out that the lot lines are parallel. Also, he wanted to locate the house to be built in the rear of the lot, and had to keep it at least 10 feet away from his own house, noting that this was a 120-foot wide lot. He said that the house will be located at the 120-foot line. Regarding Lot 3, he tried to make it a conforming lot, but it pinched the other down and he wanted to keep them parallel. Mr. Chevalier also submitted letters from neighbors that supported his proposed work.

Mr. Chevalier then referred to the example of the 22 Lost Oak Road petition formerly filed, noting that he was chair of the ZBA at that time, and disagreed with Planning Board's letter asserting that his case was similar to that of Lost Oak Road. He said that the abutters were against the Lost Oak project. He explained that the big issue was that subdivision of the lot was prohibited after the house is built. Also, to develop the center lot, he mentioned a petition by Dave Johnson, 76 Maple St., who decreased frontage from 120 feet to 112, as his lot narrowed, and the board voted for it, and asserted that this situation was similar to his situation. Mr. Chevalier concluded that he thought that he met all the necessary criteria to have his request granted, and reiterated that his immediate neighbors were supportive.

Mr. Olson spoke next. In the interest of full disclosure, he stated that he was chair of Planning Board, so he recused himself from the letter and any deliberations in issuing the letter. He then mentioned the example of 22 Lost Oak, and agreed that the board's decision had nothing to do with Mr. Chevalier's situation. He agreed with Mr. Chevalier that 76 Maple St. was a much more similar situation to his own. Mr. Olson noted that, on Lot 2, the frontage is a little larger than the width, and stated that Mr. Chevalier was entitled to ask to decrease frontage to 100 feet. He pointed out that 104.7 feet is the minimum width on the plan, and asserted that there was no sense for him to be penalized if it is off by a small amount because the property flairs out slightly. (Mr. Chevalier added that this section of the bylaws was meant to prevent someone from placing a house in the narrowest spot on their lot).

Mr. Rajeshkumar asked Mr. Chevalier why he wants to do this work? Mr. Chevalier replied that he wants to divide his property because he wants to build a house for his daughter and her family, and perhaps for his son one day.

Mr. Witkus opined that the proposal would not be detrimental to the neighborhood, that it would be good use for the land, and that it would fit in nicely.

Mr. Femia said that he was surprised that Planning Board mentioned the example of Lost Oak, as the covenant was the main issue, and asserted that no one was in favor of that project; he mentioned that he researched this and the covenant agreed with Mr. Chevalier. He explained that, in Section 4.1E of the bylaws, that the minimum lot width cannot be less than the lot frontage, so the width, 104.87 feet, has to equal the frontage of 107.85 feet, or the frontage decreased to meet the width. Mr. Femia thought that, in Lot 1, the difference of .15 feet should not be an issue, but said that his only concern is that the other goes from 107.85 feet to 104.87.

Mr. Femia added that Mr. Chevalier would have to go before Planning Board for an ANR plan also, after obtaining the special permit from ZBA. He said that it would be up to the board if he has to move the lot line. Mr. Femia noted, regarding Lot 3, if Mr. Chevalier builds later for his son, the house would have to be in the front because the property narrows in the back.

Mr. Olson continued, regarding Lots 1 and 2, suggesting that the driveways are planned next to each other with essentially one curb cut into the street? Mr. Chevalier said "yes", and he also wants to avoid conflicts with anyone in the winter regarding plowing, but verified for Mr. Olson that it will not be a common driveway.

Mr. Olson next discussed factors relating to Section 6.2. First was sewage disposal. Mr. Chevalier explained that he has three sewer stubs on the property and noted that he is paying betterments. Also, he brought in a conduit for power and explained how power would come in to his property. He noted that he would have to bring in water and gas from across the street. He added that there are no wetlands on the property.

Mr. Olson said that it seemed like there were time constraints for action by the board. He said that they need to communicate with the Conservation Commission and Board of Health, and they need to wait 35 days before they take action; they should get written responses from both boards. Mr. Femia asked Ms. Goldstein to reach out to them the next day.

Mr. Herget then said that he wanted to look at the map, and asked Mr. Chevalier where the existing lot lines were. He mentioned the example of 76 Maple Street and that they allowed decreased frontage but it was a vacant lot, and he was not sure if it was appropriate to take an existing conforming lot and make it nonconforming. Mr. Olson responded that he understood that the lot was nonconforming because it would not exactly meet the required numbers, but he asserted that the board does have the authority to reduce frontage and width as well, and make them conforming lots with the special permit, according to section 4.2C.

Mr. O'Neil agreed, explaining that they would set the minimum frontage, and he felt that nothing in the bylaw would disagree with that. Mr. Olson asserted that they would conform by 4.2C and granting of the special permit. Mr. Herget continued, that there are not three vacant lots, and he was concerned that they would be taking a conforming lot and changing it to nonconforming in order to obtain more lots. Mr. Olson suggested that Lot 2 be 120 feet and Lot 3 would be nonconforming but would be vacant, but he thought they did not have to do that. Mr. O'Neil responded that the house lot has 120 feet frontage, and the other 100 feet, and asserted that nothing in the bylaws limits to vacant lots. He suggested that the lot frontage should be brought down to the minimum width (104.7) and set that as minimum.

Mr. Femia asked Mr. Herget, would it be different if each lot had 120 feet of frontage, and was he concerned because two lots will be less than 120 feet? Mr. Herget replied, reiterating that his concern was taking a conforming lot and making it nonconforming. Mr. Chevalier responded that, in the bylaws, the board can reduce frontage with a special permit, and the bylaw allows 100 feet; he asserted that this would not be nonconforming. Mr. Olson asserted to Mr. Herget that the bylaws do not limit the board to relief only for vacant lots. Mr. O'Neil commented that, also, two vacant lots have 120 feet of frontage and asserted that a house on it should not limit that. Mr. Femia then added that the applicant must still go to Planning Board for an ANR plan, and agreed that the bylaws do not specify that the lots must be vacant and did not believe that it should not be approved.

Next, Mike Robidoux spoke (he did not sign in and his address was not clear on the recording). He asked if all the driveway accesses are to Maple Street? Mr. Chevalier replied “yes” and explained that the two driveways were together, and potentially a third would be there.

Jim Materas of 38 Edgewood Ave. spoke next. He said that he was a neighbor and direct abutter, and that he would welcome what the Chevaliers want to do, noting that that the work will not block their view.

John Bedio (sp.?-did not sign in) of 245 Maple Street commented that he had no objections at all to the project.

Craig Gonyea of 257 Maple Street also had no objections.

(Mr. Rajeshkumar made a motion to close the public hearing and Mr. Orciani seconded, but Mr. Olson wanted to reopen the hearing and consider continuing the public hearing in order to review all letters and be sure there would be no grounds for an appeal. Mr. Femia called for a motion to overturn the motion. Mr. Rajeshkumar made the motion to overturn the motion. Mr. Orciani seconded. All in favor). Mr. Olson explained to Mr. Witkus that the other boards need 35 days to give their opinions. Mr. Olson then made a motion to continue to May 18 at 7:15 p.m., the next regularly scheduled ZBA meeting. Mr. Witkus seconded. All in favor. Mr. Femia instructed the Secretary to e-mail both Concomm and Board of Health for their opinions, and when they respond, the information will be sent to Mr. Herget.

### **Other Business Continued:**

#### **Update by Building Inspector Regarding Construction at 92 North Main Street:**

Mr. Herget informed the board that the project was moving along. He mentioned that he and the Fire Dept. Chief inspected fire alarms in Bldg. C earlier today. He said that the plumbing and wiring were installed on the third floor, and will be inspected next week. Regarding Bldg. B, he said that they are doing the roofing now, and all the framing was done; they will do the inside of the building after the siding and roofing. Regarding Bldg. A, he said that the foundation was in, and he expected the framing to begin the following week.

In response to a question from Mr. Femia, Mr. Herget replied that, on Bldg. B, the plywood that needed to be replaced by fire-resistant plywood was immediately replaced. He also replied that they expect to open Bldg. C in September, and added that there were no issues as yet requiring that he call VHB.

Mr. Herget then discussed the number of units of each type in each building with board members who asked about that. Mr. Herget added that the project was moving quickly, with 60 men working each day.

Mr. Witkus then asked Mr. Herget if the trees will grow when they are planted, as he commented that it looked like planting will be done on top of ledge. Mr. Herget replied that base soil and loam topsoil will be brought in to take care of that. In response to a question from Mr. Rajeshkumar, Mr. Herget replied that each unit will have washer and dryer, and also will be all electric, with central heat, and described that the new electric heat/AC will be split to be more efficient and cost efficient; he also replied that there are no solar panels at this time. (There were no further questions or comments).

**Local Preference Approval by MHP:**

Mr. Femia notified Mr. Ali and the board that MHP approved the ZBA's request for 70% local preference at 92 North Main Street, which would amount to 14 units, which will be scattered around between the three buildings; the Town Administrator sent an e-mail to MHP to obtain a formal letter of approval.

**ZBA Special Meeting:**

Mr. Femia reminded the board, and notified those present, that the ZBA will have a special meeting on April 27, 2017, at 6:30 p.m., to discuss the Brossi situation; he also reminded the board to bring any questions with them.

**Town Meeting:**

Mr. Femia reminded everyone that Town Meeting will take place on May 15; also, there will be an informational meeting regarding the new planned Senior Center on Tuesday, April 25, at 3:00.

**Possible Filing by West Boylston Municipal Lighting Plant (WBMLP):**

(E-mails on this subject were passed out to the board prior to the meeting). Mr. Femia notified the board and those present that Jonathan Fitch of WBMLP, who has an existing permit for installing a solar-based distributed generation system at the corner of Shrewsbury Street and Paul X. Tivnan Drive wants to install (3) new systems there. He informed the board that this would be a new project. Mr. Femia questioned, as a 2009 special permit was granted for the existing system, if Mr. Fitch wants to install (3) new ones, would this mean filing a new petition for special permit, or only a modification to the present permit? Mr. Olson opined that it would be up to the Zoning Enforcement Officer (the Building Inspector). Mr. Femia instructed Ms. Goldstein to e-mail Mr. Herget, sending him the information about the project, and asking him for his opinion as the Zoning Enforcement Officer.

**Update to Zoning Bylaws:**

Mr. Femia notified the board that the Planning Board is looking to update the Zoning Bylaws and wants feedback; Mr. Olson had sent an e-mail to the ZBA board explaining this. Mr. Femia instructed the board members to send any comments to Ms. Goldstein by May 1. He mentioned a few areas that the ZBA is looking to revise, such as the bylaws regarding accessory apartments and digital signs.

**40B Handbook for ZBA:**

(This was handed out to all members prior to the meeting). Mr. Femia explained that MHP produced the handbook, and he mentioned that he was making binders for the board with this document and four other handouts which he felt that every ZBA member should have.

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 8:29 p.m. Mr. Orciani seconded. All in favor.

Respectfully submitted,

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Toby S. Goldstein, Secretary

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