



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, September 28, 2017/7:00 p.m./Board of Selectmen Meeting Room

Members Present

David Femia (Chair), Christopher Olson (Vice-Chair), Barur Rajeshkumar (Clerk), Nathaniel Orciani (arrived 7:45), Charles Witkus, John Benson (Assoc. Member-arrived 7:15, present for first public hearing) and Toby Goldstein (Secretary)

Members NOT Present

Daniel Cronin (Associate Member)

Invited Guests

N/A

Welcome – Call to Order

Time: 7:00

Approval of Previous Minutes

August 17, 2017

Motion Originator

Mr. Rajeshkumar

Motion Seconded

Mr. Olson

Treasurer – Financial Report

Mr. Femia-signed invoice; read financial report; discussed financial situation of board

Motion to Accept

N/A

Seconded

N/A

Update from Building Inspector Regarding Construction at 92 North Main Street:

Mr. Femia announced that he was told that the Building Inspector, Bentley Herget, was not in this day due to illness, therefore he was not present at this meeting for an update. Mr. Femia did say, however, that a Certificate of Occupancy was issued for Building C by Mr. Herget, and opined that good progress was being made in the construction there, and that hopefully work will be done by the end of this year.

Mr. Femia continued, that it seemed as though not all the two and three bedroom units had two baths. He then proceeded to discuss the number of units of one, two and three-bedrooms and the number of baths that they had. He noted that he looked at a model apartment, and opined that it was beautiful and had good workmanship, and mentioned that each unit has a full washer/dryer. Referring to the pamphlet printed for the apartments, he discussed the prices of one, two and three-bedroom apartments, for affordable and market value units. (Mr. Benson arrived at 7:15 pm).

Continued Public Hearing, Wachusett Woods Realty Trust (Jos. Evangelista and Gary DeWolfe, Trustees), Petition for Special Permit, Woodland Street:

(Attorney George Kiritsy represented). (Mr. Rajeshkumar read aloud the hearing posting). (Mr. Femia said that Mr. Kiritsy informed the board that there was a minor change from what was presented at the August 17 meeting).

Mr. Kiritsy referred back to feedback received from other Town boards at the August ZBA meeting. He said that Ron Thunberg, surveyor, went out to the property, and he showed the board the revised plans. He described that Lot 4 has a 100-foot wide strip. Mr. Thunberg investigated the wetlands, as one board member was concerned about an easement in that area. Mr. Thunberg suggested that they shave off more from Lot 5, which would still be conforming, such that Lot 4 would start at 100-foot width, then widen out. They would move the house forward, and the easement would be on the other side. Therefore, Mr. Kiritsy said, they would be increasing the property area and width. In response to a question from Mr. Femia, Mr. Kiritsy replied that the length would be 61+105+191 or 357 feet. Mr. Kiritsy pointed out that the house would be on the north side of the easement, away from the wetlands.

In response to a question from Mr. Benson, Mr. Kiritsy replied that the property will widen from the road back, to 167 feet, whereas before it was 100 feet all the way back.

In response to a question from Mr. Femia, Mr. Kiritsy replied that the easement would be about 40 to 60 feet from the house. Mr. Kiritsy added that, as the Concomm submitted that it did not have a problem with the applicant's request (he asserted this) (see file), they will be moving even further away from the wetlands. Mr. Femia asked Mr. Benson if there was a requirement for the applicant to be a certain distance from the easement? Mr. Benson responded that the special permit is subject to all setbacks; they are only asking to be 100 feet from the road. In response to a question from Mr. Witkus, Mr. Kiritsy replied that Lot 4 will have a single-family home, and, for Lot 5, it will have what the Town will allow for a business zone (he pointed out where Lot 5 is, and added that this lot has about 170 feet of frontage). In response to another question from Mr. Witkus, Mr. Kiritsy replied that there is no assigned house number yet, and, showing Mr. Witkus the location on the plans, pointed out that the lot where they propose building the house is across from Pincroft Dairy. In response to a question from Mr. Benson, Mr. Kiritsy replied that these changes were not put in writing, but the changed plan has been submitted. Mr. Olson added that this change in plan should be referenced in the decision, and noted that it was dated differently than the previous plan. He also added that the applicant will go before Planning Board for an ANR plan. (Mr. Kiritsy then answered questions from the board regarding what might be built on the lots, and who the property owners were, and what would remain on the other side of the aforementioned easement. In response to a question from Mr. Witkus, Mr. Kiritsy replied that the existing dirt road will be abandoned because something will be built on Lot 5, and he explained how one would enter the lot, and explained that they are asking for the special permit because the lot was "sub-standard", as worded by Mr. Witkus.

With nothing further to discuss, the board members discussed comments from other Town boards (on file), which stated that they had no objections to, or issues with, the applicant's proposal. The public had no questions or comments. The board then deliberated. Mr. Olson asserted that most of the issues were discussed at the August meeting. He commented that access seemed adequate to and from the property; the board was waiting for written comment from the Conservation Commission, who said that they had no issues with the work; Mr. Olson, therefore, felt comfortable granting the special permit. Mr. Benson noted that it should be approved per version 2 of the plan, dated 9/6/17. Mr. Olson responded that this revision makes the lot bigger, but does not reduce the frontage. He noted that, after checking with DPW regarding drainage, they okayed the project. With no further comments, Mr. Olson made a motion to approve the petition for decrease in frontage to 100 feet for Lot 4R, Woodland Street, as revised 9/6/17. Mr. Rajeshkumar seconded. All in favor. The vote was as follows (5-0-0):

Mr. Rajeshkumar – "Yes"

Mr. Olson – "Yes"

Mr. Femia – "Yes"

Mr. Benson – "Yes"

Mr. Witkus – "Yes"

Update on Application Process for 92 North Main Street:

Mr. Femia informed all present that the lottery was to take place on October 18, and the results would be announced shortly after.

Discussion of Name Change of 92 North Main Street:

Mr. Femia reminded all present that all paperwork for the above property referred to it as Sajda Gardens, but said that the management company wanted to change the name. Mr. Femia asserted that any changes should come to the ZBA directly, but instead the matter was brought to DHCD and MHP; the name is now listed as "92 North Main Street DBA Sajda Gardens." Mr. Femia discussed with the Town Administrator and Town Counsel if this would be a substantial change, and Town Counsel said that it was not, but if the ZBA wanted to, they could make an issue of it. Mr. Benson wanted to know if there would be a sign to that effect, or would it just be a business title? Mr. Femia replied that he did not know, but was concerned if it would be an issue regarding all the paperwork for the project. (The board discussed this and no one thought it to be a substantial change. Mr. Rajeshkumar suggested that those involved with the property could always be asked to come back before the board about this).

Update on Filing Fee Changes:

Mr. Femia discussed the most recent ZBA financial statement, which indicated that the board had low funds; therefore, he said that the project would be put aside for the present.

Update on Accessory Apartment Bylaw Changes:

Mr. Femia informed the board that he was still working on that.

Discussion Regarding When to File Special Permits and Variances:

Mr. Femia explained that there had been controversy regarding people requesting one or the other but they should really be requesting the other instead, and gave an example where the Building Inspector recently signed off on a Zoning Requirement Form that the resident needed a special permit, where they in fact needed to file for a variance (the resident wanted to install a fence greater than 6-feet in height); Mr. Femia had based this conclusion upon a previous filing for Mt. Vernon Cemetery, for variance to install an eight-foot fence. Mr. Benson

remarked that, for a 10-foot fence, the fence cannot be within 10 feet of the property border. Mr. Femia responded that he would ask the Building Inspector about this. Mr. Rajeshkumar said that he thought there was a limit on fence height, and Mr. Benson responded that a six-foot fence can go up to 6 feet from the property line. Mr. Benson agreed that the applicant would need a variance for the greater than 6-foot fence.

(At 7:45 p.m., Mr. Benson left the board; Mr. Femia explained that Mr. Benson recused himself from the public hearing at 7:45, as he was related to an abutter and also might not be available if there is a continuation of the public hearing. Mr. Orciani arrived and was going to sit on the board for the hearing).

Public Hearing, Peter Dumas, Petition for Special Permit, 22 Lee Street:

(Peter Dumas represented). (Mr. Rajeshkumar read aloud the posting for the hearing). (Mr. Femia explained the procedure of the public hearing to Mr. Dumas).

Mr. Dumas stated his name and address before the board. He gave a background of his filing. Mr. Dumas explained that he had been retired for two years, and started selling old documents, mainly at antique shows and flea markets, and had rented space at antique shops in Worcester and West Boylston. Next he explained that he was looking to have a small space in his home to sell his items periodically. He mentioned that he sells to designers, and asserted that it would be helpful to display items in his home. He explained that it would be only a small part of his property, open one to two days per week in the warm weather; he is proposing 200 square feet of space to do this. He thought of using a 192 square-foot, 12' x 16' shed on his property, but then thought that his garage would be a better option. In response to a question from Mr. Olson, Mr. Dumas replied that there is not a shed existing now.

Regarding questions about parking, Mr. Dumas continued, showing sketched out where the driveway is located, adding that it is 10 feet from the property line. Regarding the garage, he said that there is room for a turnaround so that customers do not have to back out. He asserted that he only needed one parking space for a 200-square foot area. In response to questions from the board, he also said that his customers would be partially by appointment, partially will just show up there.

In response to a question from Mr. Femia, Mr. Dumas replied that, so far as advertising was concerned, he would be relying upon customer base and social media, and might place a yard sale sign in the yard if he was having a yard sale. Mr. Rajeshkumar asserted to Mr. Femia that Mr. Dumas would need a sign permit from the Building Inspector.

In response to another question from Mr. Femia, Mr. Dumas replied that the garage was 24 ½' x 16', and fits two cars (to Mr. Rajeshkumar), but noted that one of those cars could remain outside to make room in the garage. Mr. Rajeshkumar commented that there can be lots of people at yard sales. Mr. Dumas asserted that his proposal would eliminate the need for yard sales.

Regarding a question from Mr. Femia about parking, Mr. Dumas replied that people could park in front, at the end of the driveway, maybe three cars would face the back yard, then they can back up and turn around. Or they can park along the driveway (four or five cars). Also, he would have no employees, and would just need two vehicle spaces for himself.

Mr. Femia asked Mr. Dumas if he read the Zoning Bylaw? He said that he did. Mr. Femia referred to ten points listed there. Mr. Rajeshkumar asked, if there are more customers than can park in the driveway, where would they park? Mr. Dumas replied that they could park on his lawn, and he opined that he will not have that many customers. Mr. Femia continued, that on a 20' x 125' driveway, there would be plenty of room to park cars, even six or seven at one time, with no one on the street. Mr. Dumas added that there will be no permanent signage. He added that, if there are any concerns, he could build the shed. Mr. Femia, referring to the bylaws, responded that the shed would not be allowed, as the home occupation has to be part of the residence and there

is to be no exterior storage of materials. According to the bylaws, Mr. Dumas would have to convert part of his dwelling for the home occupation, so it would need to be in the garage.

Mr. Olson added, that there can be no exterior display, storage of materials, or indication of a home occupation, and suggested that, when there is a sign, that it might need to be attached to the building. Mr. Femia and Mr. Olson then discussed with Mr. Dumas sign requirements; there could be one sign, two square-feet in area, with name and occupation only. The sign is small, so Mr. Dumas would have to consider the distance from the road to the house. Mr. Femia added that the sign cannot be displayed outside of the garage (exterior display). But, Mr. Dumas noted that most of his business will be through social media.

Mr. Femia, referring to the bylaw again, did not think that there would be a problem with generation of items such as traffic and sewage, unless there would be a very large number of people at a time, which Mr. Dumas said would not be the case.

Mr. Femia instructed Mr. Dumas that, if the permit is not used for one year, it will expire, and he would have to notify the Building Inspector within 30 days of sale or transfer of the property.

Mr. Femia continued, that if this property was within a business district, Mr. Dumas would not have had to appear. He remarked that it was troubling that the home occupation cannot occupy more than 25% of the floor area of the residence. Mr. Olson asked if, in the total square footage of the house and garage, is the garage more than 25% of the total? Mr. Dumas responded that the house is 2,660 square feet, exclusive of the garage, and one bay of the garage is approximately 200 square feet. They determined that it would be within the 25%.

Next, Mr. Femia referred to the bylaw item regarding parking spaces; Mr. Dumas needs to confirm that he will comply with zoning for parking. Mr. Dumas responded to a question from Mr. Orciani that the driveway was existing. Mr. Femia, referring to the Planning Board's discussion of proof of maneuvering, that the planned situation will be more than sufficient.

Mr. Rajeshkumar was concerned that too many cars would be seen if there was a yard sale. Mr. Dumas replied that he advertises as a large yard sale. In response to Mr. Orciani, Mr. Dumas replied that he would not have the yard sale when his business is open; he asserted a yard sale would be different than when he has his business open so that people can come in and see the layout of what he offers. Mr. Femia opined that there would be more than enough room for cars to turn around and leave the premises, and he mentioned that, in Planning Board's opinion, maneuvering exists for additional parking. Mr. Rajeshkumar then discussed with Mr. Dumas what type of work he would be doing, and whether or not there would be noise from it (Mr. Dumas said that there would not be noise).

Mr. Olson continued, that he saw a distinction between a yard sale and Mr. Dumas' proposed work, and suggested adding certain requirements as conditions in the special permit. One was that the business shall not generate traffic or parking greater than what is normal in the neighborhood. He added that, going forward, if Mr. Dumas has a yard sale, the Building Inspector might look at it and consider it a violation. In response to a question from Mr. Femia, Mr. Dumas replied that the days he would open would vary by week, as he will still do antique shows; this home occupation will be a side business, probably open one to two days per week. He also replied that he will probably be open from May 1 to Columbus Day or the end of October. The board then discussed whether or not there could be a condition of the special permit that it is only viable during these dates; or maybe so long as there is not a nuisance for the neighborhood; street parking was concerning to the board also. Mr. Dumas agreed to not allow street parking.

Mr. Femia next brought up items bylaw items regarding Declaration of Covenants. Mr. Femia felt that there was no need for that, as it specifies that, if the property is sold or title transferred, or there is no business for one year, the special permit would expire. Mr. Olson reiterated that the Building Inspector would have to be notified if there is a sale or transfer of property; but the Declaration of Covenant is to let a potential buyer know that the special permit expires with the sale of the house, and therefore protects everyone. (There remained some disagreement from the board members as to whether or not the Declaration of Covenant was necessary; Mr.

Femia instructed Ms. Goldstein to ask the Town Administrator to ask Town Counsel if she has a Declaration of Covenant for home occupation form, and told Mr. Dumas that the board would get the information).

(There were no other questions or comments from the board or the public). (Mr. Dumas told Mr. Olson that Ms. Goldstein had sent him copies of the responses from the other Town boards; Mr. Femia announced that Conservation Commission had no issues, Board of Health none, and Planning Board's comments were discussed this evening). Mr. Rajeshkumar then made a motion to close the public hearing. Mr. Olson seconded. All in favor. (The board now deliberated).

Mr. Olson mentioned that the written opinion should include the square footage and garage size, and that it is clearly under the required 25%; Mr. Femia agreed. Mr. Dumas reiterated that he did not want to put up a permanent sign. Mr. Femia reminded Mr. Dumas about conditions of expiration of the special permit. Mr. Femia explained to Mr. Dumas that the board will issue a decision, there will be an appeal period, and the Declaration of Covenant must be completed and registered (he instructed Ms. Goldstein to find out from Town Clerk if Mr. Dumas must take the document to her or to the board first).

With no further discussion or questions, Mr. Rajeshkumar made a motion to approve the special permit for home occupation, with the conditions as stated in Bylaw Section 3.5.B. Mr. Olson seconded. All in favor. The vote was 5-0-0; the vote was as follows:

Mr. Rajeshkumar – "Yes"

Mr. Olson – "Yes"

Mr. Femia – "Yes"

Mr. Orciani – "Yes"

Mr. Witkus – "Yes"

Miscellaneous Mail and Paperwork:

Mr. Femia reviewed some mail and signed an invoice.

Future ZBA Items:

There were none:

Any Items Not Received Prior to 48 Hours Before Meeting:

There were none.

Next Scheduled ZBA Meeting:

Thursday, October 19, 2017 will be the next ZBA meeting.

Motion to Adjourn:

Mr. Rajeshkumar made the motion at 8:40 p.m. Mr. Orciani seconded. All in favor.

NEXT MEETING

Thursday, October 19, 2017

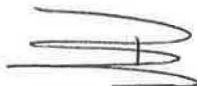
MOTION TO ADJOURN

Motion Originator Mr. Rajeshkumar

Motion Seconded Mr. Orciani

Time of Adjournment 8:40 p.m.

Signatures


Barur Rajeshkumar

Submitted by: Toby S. Goldstein 

Date Submitted: 11/16/17