



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, February 15, 2018/7:00 p.m./Selectmen's Meeting Room

Members Present

David Femia (Chair), Christopher Olson (Vice-Chair), Barur Rajeshkumar (Clerk), Charles Witkus, Andrew Feland (Associate Member) and Toby Goldstein (Secretary)

Members NOT Present

Nathaniel Orciani; John Benson (Associate Member), and Daniel Cronin (Associate Member)

Invited Guests

Bentley Herget, Building Inspector;
Iqbal Ali, Developer

Welcome – Call to Order

Time: 7:05 p.m.

Approval of Previous Minutes December 6, 2017 (Executive Session); January 18, 2018 (Regular Meeting)

Motion Originator Mr. Olson (12/6); Mr. Rajeshkumar (1/18)

Motion Seconded Mr. Rajeshkumar (12/6); Mr. Olson (1/18)

12/6 Vote: 4 "yes", 0 "no", 1 "abstain" (Mr. Feland)

1/18 Vote: 4 "yes", 0 "no", 1 "abstain" (Mr. Feland)

Treasurer – Financial Report Mr. Femia reviewed the accounts and balances on statement dated 1/31/18 (latest one)

Motion to Accept N/A

Seconded N/A

Minutes of December 6, 2017 Executive Session:

The minutes were accepted as submitted (see above for motions and votes).

Minutes of January 18, 2018 Meeting:

The minutes were accepted as submitted (see above for motions and votes).

Building Inspector's Report Regarding 94 North Main Street:

Mr. Herget reported that there were essentially no changes since his last report. He said that he went to the site and compiled a list of deficiencies that need to be remedied before he can issue a final Certificate of Occupancy (this list is on file). Mr. Femia announced and read aloud a letter sent to Mr. Ali, the developer, dated January 29, stating that the final Certificate of Occupancy cannot be issued at this time as all of the site work has not been completed, according to the Comprehensive Permit dated February, 2016. Mr. Herget also mentioned that posting of a bond by the Town is allowed in the Comprehensive Permit, p. 26 (this section of the Comprehensive Permit was photocopied and distributed to the board members-Mr. Femia read this aloud), and the amount of it decided by ZBA. Mr. Femia suggested to the board that he would like to take the Building Inspector's letter and the list of deficiencies to VHB and obtain from them a cost estimation of what it would take to correct the deficiencies, and then determine from that how much of a bond to request from Mr. Ali.

Mr. Ali then addressed those present. Showing a map of the site to the board members, he discussed the proposed fence in the back, explaining that it would be on top of the hill, where the ground is all ledge (he asserted). He pointed out a gazebo that they added; he said that a gym was added; there is also a pet facility (dog park), which is fenced in, not for the public, but only the tenants. (Mr. Herget looked at this). Mr. Ali asserted that it would be difficult to build a fence at the bottom of the hill because of snow storage, and he said that the dog park, playground, and all the ponds have fences. He wanted to know if the board could give him relief from having the fence at the top of the hill. Mr. Olson commented that the ground is all ledge there, and Mr. Feland commented that there is DCR land behind it.

In response to a question from Mr. Rajeshkumar, asking if stones could fall without the fence, Mr. Ali described the slope of the property; he said that the plan was approved for a 2 to 1 slope after initial approval for 1 to 1; he said that the slope varies in different places. Mr. Femia explained why the slope is like this and that VHB agreed that it had to be done this way. Mr. Herget commented that the fence was on the plan for the development, but opined that it would not serve much purpose except perhaps for safety of children. Mr. Ali asserted that he had discussed this before. In response to a question from Mr. Olson, Mr. Ali said, as a chain link fence, it would not provide privacy. Mr. Rajeshkumar responded that, in the Comprehensive Permit, the reason that a fence was suggested was for safety, but if Mr. Ali does not want it now, he should consult with VHB. Mr. Herget responded to Mr. Femia that he did not have a problem if there were to be no fence. Mr. Rajeshkumar questioned the issue of children being able to go into the woods and suggested that there could be liability if there were no fence. Mr. Ali asserted that VHB agreed that the fence was not serving a purpose. (Mr. Ali then pointed out DCR land to Mr. Femia).

Mr. Femia then asked the board if they should discuss this issue with VHB? Mr. Rajeshkumar then asked again why there would be no fence? Mr. Ali reiterated that it would have no purpose, and because of the ledge, the fence cannot be put on it, and if a rock were to fall, it would go through the building. He also asserted that a 2 to 1 slope is allowed in the Building Code, and a fence would not be needed. In response to a question from Mr. Femia, Mr. Ali replied that the fence would be approximately 40 feet back from the end of the parking lot. Mr. Rajeshkumar suggested that they should consult with VHB, which was fine with Mr. Ali, as he needs to find out what he has to give for the bond. Mr. Femia suggested that Mr. Herget write up something for VHB about this, and suggested that perhaps they can come to the next ZBA meeting.

Mr. Ali then asked Mr. Femia what kind of bond he would have to give? Mr. Femia replied that it hasn't been discussed, and hopefully there will be an answer by the next meeting; the board will discuss this with the Town Administrator and the Board of Selectmen, and he reiterated that the ZBA sets the amount of the bond. (Mr. Femia instructed Ms. Goldstein to put Mr. Ali on the agenda, with the time to be determined).

Informal Discussion, Natasha Maunsell, Regarding Her Property at 62 Central Street:

(Ms. Maunsell and Susan Meola represented). (Mr. Femia asked Mr. Herget to remain for this discussion). (Ms. Maunsell introduced herself and gave her address, which is 79 Malden Street). Mr. Femia informed everyone that there had been much communication between the Building Inspector and Ms. Maunsell. Ms. Maunsell explained her situation. She and her husband live in Town and have a security business; they would like to have their business at 62 Central Street, near their home. She explained that Sue Meola brought them down there in 2009 when the property was up for sale to see Mark Brodeur, the Building Inspector at that time. She asserted that the property should be business property, and noted that there was a business there previously. She discussed that Mr. Brodeur confirmed that this was a historic business zone (paperwork on file) (Mr. Femia explained who Mark Brodeur was to all present) and she explained what she wanted to do with the property to him. She gave the board a brief history of the uses of the property, noting that there were businesses there since the early 1900's. Ms. Maunsell continued that, in 2015, it was still a three-family property and considered in a business zone. They are ready to renovate the barn, as they finished the work on the home and the landscaping, and the builders went to the Building Inspector who was then Bentley Herget, who told them that this was a residential zone so they could not put their business in the barn; she added that the Assessor did not know when or how the zoning was changed and asserted that she said she would put it back. (Ms. Maunsell showed the board her property on a map). She continued that, from the 1830's to 1908, it was before it was business property. She explained that the barn is falling down and they are trying to salvage it; the insurance company gave them a waiver, but it needs to be fixed; they use part of it for storage now, but want to put the business in the barn and do not know what they can do. (Mr. Herget responded to Mr. Femia that he had not been out to this property yet).

(The board members now had questions for Ms. Maunsell). In response to Mr. Witkus, Ms. Maunsell replied that they would have a security business, not with high traffic. (Mr. Feland opined that mostly they would work at clients' sites). Also in response to Mr. Witkus, Ms. Maunsell replied that the parking area was not theirs but Duncan's, who would probably allow them to use it, and that they want to fix their house then go to the barn for their business. (Mr. Femia explained to Marc Frieden of Planning Board, who was also present, that Mark Brodeur had told Ms. Maunsell that this was a business zone, and she told Mr. Frieden that somehow the zoning changed. Mr. Frieden asserted that the zoning did not change. Ms. Maunsell responded that Diane Peterson, Assessor, did not know how this happened. They all looked at photos. Ms. Maunsell added that Mr. Brodeur said that this was a historic business district and she could do what she wants with the property so long as it is according to code). Mr. Feland asked if she would need a variance? Mr. Femia suggested that she can apply for a home occupation license, but Ms. Maunsell noted that she does not live there. Mr. Rajeshkumar explained that the Assessors' Office did not change zoning for a long time, and asserted that someone changed it in their office. Ms. Maunsell continued that the work on the house was all done, and that her brother (3rd floor), a friend (2nd floor), and Ms. Maunsell (1st floor) live in the house, and that she would like to retire with the property. The board, Ms. Maunsell, and Mr. Frieden then discussed possible ways that the change happened, and that, in August, 2015, it was still shown as a business district but in 2017 it was residential. Mr. Femia continued, that Ms. Maunsell went to Mr. Brodeur in good faith and he told her it was business-zoned, there were other businesses in the area, and her property was a business at one time; she replied to Mr. Femia that this was the main reason that she bought the property. Mr. Herget pointed out on a zoning map that this property is shown as pink, a business zone.

Mr. Femia suggested that this discussion be continued to the March 15 meeting so that they can obtain more information and find out if this property is actually zoned as general residence even though Mr. Brodeur told her it was for business. Mr. Herget added that Mr. Brodeur used his available resources, and allowed her to put up a three-family home, all in a business zone, based on his available information, and if he (Mr. Herget) were asked,

he would probably have said the same thing. Mr. Femia told Ms. Maunsell that Ms. Goldstein would send her a notice about next month's meeting.

Public Hearing, West Boylston Municipal Lighting Plant (WBMLP), Petition for Special Permit, 225 Shrewsbury St., West Boylston:

(Jonathan Fitch of the WBMLP represented). (Mr. Rajeshkumar read aloud the public hearing notice; the proposed work was the installation of an electrical storage system at 225 Shrewsbury Street). Mr. Femia explained to those present that the petitioner would give a presentation, then the board would ask questions, then the public would give questions/comments. Mr. Fitch explained that they propose to install flywheel storage devices to store solar energy from the solar system already there, and this energy can be used later in the day when needed the most. He explained that a grant from the State of MA will cover one-half of the cost. He asserted that this is a good demonstration of energy storage technology. He pointed out that the property is industrial zoned, and there is space and setbacks for it. Mr. Fitch described that 16 capsules will be buried underground; in the manufacturer's video (which the board was able to see online, and on local public access television), regarding concerns about noise, the flywheels are well-balanced, efficient, frictionless, and spin for four hour intervals per day. He noted that most of their neighbors are industrial, except for the Angell Brook development, which is across the street from them; he reached out to the Trustees of Angell Brook, and there was very little concern about the project. Mr. Fitch added that they would like to install the system in the fall, and perhaps begin operating by December.

Next the board asked their questions and made comments. Mr. Feland opined that the project would be "fantastic". Mr. Rajeshkumar asked about possibly humming sound and if this would be constant, and Mr. Fitch replied that there is no noise from the devices themselves; he noted that there is a buzzing in the video, but no noise from the flywheels themselves, and if there is, it is not working properly, and no noises are listed on the specification sheets. He asserted that noise in the videotape came from the monitoring station in the video. In response to questions from Mr. Rajeshkumar, Mr. Fitch discussed the power of the system (128 kW, half the size of the existing solar system), and said that the electric bills may not go down but they won't go up; effect on the electric bills will help determine if they want to increase the system at some point, and he suggested that it might be a good idea to do this for the capped landfill solar system. He explained that the flywheels will run in four-hour increments, probably in the afternoon and discharged later in the day; and that this would be the first such system on the East Coast. Mr. Feland opined that this system would be useful in electrical brownouts and blackouts. Mr. Fitch continued that this type of system can stabilize and regulate voltage, and can generate the power at the cheapest time of day. Regarding noise, Mr. Fitch reiterated that there is no noise from the capsule in the video, and added that a National Grid transmission site and the railroad tracks are in the same area.

In response to questions from Mr. Olson related to the solar panels on Tivnan Drive, Mr. Fitch replied that the new system would be at the south edge of the existing solar system, probably 80 feet back from the road; he also replied that he would be comfortable continuing the conditions imposed when the current solar panel array received a special permit in 2009 (obtaining and complying with all required permitting, proof that the special permit was registered with the Registry of Deeds, and in addition, no excess noise or vibrations, glare, dust or smoke and agreement with the lot lines).

In response to Mr. Femia, Mr. Fitch replied that there would be 16 flywheels in a 75 to 100 square foot area. As to why West Boylston was chosen for this, some of the reasons were that this system would have four-hour storage, while other systems are very short in storage; this system is benign in nature, whereas other systems

use ion batteries; and this system has voltage regulation. Regarding timing of the project, Mr. Fitch replied that it would take two to three months to complete the project, and they would try to do the preparation work in the fall and then install the equipment right away, using as much existing infrastructure as possible. (Mr. Femia stated that he was glad that Mr. Fitch reached out to Angell Brook, and congratulated Mr. Fitch for obtaining the grant for the project).

(Next, Mr. Femia opened the discussion to the public). Mr. Frieden asked how heavy the flywheel would be? Mr. Fitch replied that each capsule is 10,000 pounds. Sarah Miles of 101 Central Street asked how it would be fixed if it breaks? Mr. Fitch replied that they have sensors and will monitor the vibrations and can shut them down quickly and safely. In response to a question from Mr. Femia, Mr. Fitch replied that they will not be putting up a shed as was in the video; they'll be using all existing equipment that they have there; they don't need a shed, they have a control room and transformer and they can monitor from a distance. Also, in response to a question from Mr. Rajeshkumar, Mr. Fitch replied that they will extend the present fence to encapsulate the new system, and it will be monitored with cameras and alarms. (Mr. Fitch replied to Mr. Femia that he had no more comments, and as the public and the board had no more questions or comments, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Olson seconded. All in favor. Mr. Fitch added that he will notify the board before installation so that it can be seen by anyone).

The board then deliberated, and when there was no further discussion, Mr. Olson made a motion to grant the special permit, according to bylaw section 3.2E2, for the installation of a 120 kW solar system, with three conditions-that it will comply with all permitting, submit proof of the special permit being registered at the Registry of Deeds, and there will be no excess noise, etc. Mr. Feland seconded. All in favor. The vote was as follows:

Mr. Rajeshkumar -- "yes"

Mr. Olson -- "yes"

Mr. Femia -- "yes"

Mr. Feland -- "yes"

Mr. Witkus -- "yes"

Mr. Femia continued to Mr. Fitch, to let the board know when they are ready to begin installation, and also when the system is operating, so that they can go to see it.

Mr. Fitch added that the property has been stable since 2009, and asserted that the new system should keep power rates stable and low. Mr. Femia verified that 6 to 10 p.m. would be the times of highest operation. (Mr. Femia also described the process of issuing the decision and the "No Appeal" period).

Public Hearing, Girl Scouts of Central and Western MA, Petition for Variance for Parking in Front of Property, Century Drive, West Boylston:

(Suzanne Smiley, COO of the Girl Scouts of Central and Western MA, Tony Donato of Bohler Engineering, and Lawrence Tuttle of Architectural Insights represented). (Mr. Femia re-announced the procedure for the public hearing). Ms. Smiley began by asserting that the Leadership Center on Gold Star Boulevard in Worcester, MA, was not a good location for them, but after several years of looking for another location they were interested in the West Boylston/Worcester location on Century Drive. They had been looking at the land for over a year. She described that the property is bounded on two sides by Century Drive. There is a retention basin on the north side of the triangular property. Ms. Smiley added that there was more slope to the property than they had thought. Ms. Smiley explained that it was important to them to have the parking close to the building because of the

population using the building, which would be girls ages 5 to 17, and women; they also want the driveway close to the building for them and for emergency vehicles.

Next, Mr. Donato showed those present an aerial overlay map, which showed the West Boylston/Worcester city line, and adjacent properties on Century Drive, and he said that they propose subdividing the property into a two-acre parcel for the Girl Scouts facility, a warehouse and office building, of approximately 7,400 square feet. The property is wooded. Now an existing stormwater detention pond services the industrial park to the north. He said that a challenge is that there is a significant drop from the east side of Century Drive to south side. He pointed out where they propose access of the driveway off of Century Drive. They are proposing 18 parking spaces at the front of the building within the 50-foot setback. Mr. Donato noted that a large box truck could make a delivery there and showed where the access would be, as well as the direction and the slope. He also said, in order to increase the pervious and mitigate the stormwater, they propose to have some kind of surface detention (he showed the area, on the Worcester lot) and he spoke to the City Engineer and Town Planner for Worcester; he asserted that they had no problem with this idea, but they will need a local stormwater permit and site plan review due to the detention pond with overflow structure on the Worcester part of the property. He explained that sewer and drainage are connected to an existing stormwater line on Century Drive, connected to Worcester's stormwater system. Mr. Donato continued, that they are proposing a small retaining wall in the front to support the parking, due to the steep slope (this is covered by a separate petition for variance); he spoke with Mr. Herget about this; it will be less than four feet, and not considered a structure, and along the east and north, they will need a larger one. He pointed out where sewer and drainage are along Century Drive.

Next to speak was Lawrence Tuttle. Mr. Tuttle reiterated that Ms. Smiley pointed out the constraints of the lot and asserted that they tried to obtain the most efficient shape for the lot. He added that there would only be truck traffic during the cookie sale period, and the trucks will need to circle the building.

Ms. Smiley replied to a question from Mr. Witkus, stating that there is nothing built on that lot at this time. Mr. Witkus opined that people would not see the parking in front of the building because "parking is all over there" on Century Drive.

Mr. Olson asked Mr. Donato to clarify the requests in the two variances for which they applied (Mr. Rajeshkumar read aloud the second variance notice). Mr. Olson asked Mr. Donato about the fact that, on the map, that this is all in one lot? Mr. Donato pointed out what was contained in the lot and the lot line. Mr. Rajeshkumar asked Mr. Donato if he was still working with the Planning Board? Mr. Donato replied that Planning Board was generally in favor of the project, but they said that the applicant needs relief from the ZBA before they could give approval.

Mr. Femia noted the fact that the applicant does not own the property at this time; he noted that, of nine acres, the owners (St. Pierre Assoc. Partnership II LTD) only are selling two acres to the applicant, and asked what was behind the property line in the back? Ms. Smiley replied that a detention basin was behind there, and Mr. Donato said there was a dry basin (showing aerial photos). Mr. Tuttle noted that the basin is at the border of the property line and is part of the drainage system of Century Drive, built on top of natural topography; the face of the property line actually is an elevated berm. Mr. Tuttle said that they are working on steepening the slope there. Mr. Donato clarified that the basin is about 10 feet from the property line, and the top of the berm is less than 10 feet high. Mr. Femia then referred to the setback in the back of the property, noting that according to the bylaws needs to be 10 feet, and wanted to know where the retention wall would be in the back? Mr. Femia then verified that there would be 41 total parking spaces, and asked how much of the property would actually be in West Boylston? Mr. Donato pointed out where the property would be, and pointed out where there would be a closed

drainage system and the slope going down to Mountain Street, with probably surface detention in that area. He said that actual access to the site would be on the Worcester side.

Mr. Femia, in summary, said that first of all, the parking lot would be in the front of the building, which does not agree with the bylaws but there is no land on the side or back of the building for this use. Also, he added, Planning Board approval is needed for greater than 15 parking spaces, and an ANR plan. He explained that variances are difficult to obtain, as three criteria need to be proven to grant the variance, and said that he did not see the three conditions being met unless the other board members see it (they looked at the wording of the requirements for variance).

In response to a question from Mr. Feland, Mr. Femia opined that the main entrance would be the front of the building (in this case, with a triangular lot, bounded by streets on two sides). Mr. Herget responded that, with corner lots, the front yard has the setback from both streets, but this is not a corner lot, just a bend in the road, so in his opinion the front of the property contains the majority of the frontage and the front entrance.

In response to a comment from Mr. Olson regarding hardship for shape or topography, Ms. Smiley replied that shape and topography are involved; she asserted that the proposed location is the only place where the building can be placed and this applies only to this lot because they are bounded by the stormwater management system on one side and the street on the other side.

Mr. Femia asked about the area in Worcester, as to what that would be used for? Mr. Donato replied that it would be used for stormwater management, and explained that they are not using it for overflow parking because of the steep slope and safety issues, as Ms. Smiley explained that the building will be a program facility. Mr. Femia expressed sympathy to their situation, but was not convinced that the three criteria for variance were proven.

Mr. Tuttle added that they were cognizant of handicapped access and would place the handicapped spaces near the entrance, but they are not able to place those spaces without being in the setback.

Mr. Feland asserted that they have topography, hardship, and that the project would not differ from the zoning bylaws. Ms. Smiley added that the intent and purpose of the zoning bylaw “promote health, safety, convenience and welfare” applied and thought that it reinforces the intent of the bylaw.

Mr. Witkus added that he took a ride to the property, and asserted that, with all the buildings on Century Drive, parking is in front or on the sides, and he proposed changing the front of the building. Mr. Tuttle responded that they thought the Girl Scouts would want a Worcester address for marketing purposes so the entry was put at the Town line and asserted that the entry is the front of the building. Mr. Witkus and Mr. Feland agreed that this would not cause a public problem.

Mr. Olson reiterated that the lot is currently 9 acres, and the owners of the lot are planning to sell two acres, and he asked what was happening with the other seven acres and if those seven acres will be in West Boylston? Mr. Tuttle responded that the Girl Scouts do not want the detention basin, and commented that the owners were kind enough to break the two acres away from their land. Mr. Rajeshkumar asked if they can open up the road? Mr. Tuttle said no because of the topography. Mr. Donato added that it is too steep, and they need a retaining wall at the lower elevation. Ms. Smiley continued that they originally wanted a circular driveway, but the topography would not allow it, and commented that the Red Cross has a Worcester address.

In response to a question from Mr. Femia, Mr. Donato replied that the distance from the parking lot to the front of the building would be about 60 feet.

Mr. Olson then asked about the second point of a variance, what is peculiar about this piece of land that would make it harder to comply with zoning than the surrounding lots? Mr. Donato replied that the Worcester side is too narrow to develop and asserted that the southeast corner is the only place to put a useful structure. Mr. Tuttle continued that, regarding the retaining wall at the berm, the interpretation of the bylaw is so that the owner will not constrain the future use of an abutter's parcel, and if there was compromise to this parcel by the berm, they are trying to maintain the drainage system. Ms. Smiley continued that the detention basin serves the entire development, and they have looked at the property for more than a year, and because of the shape of the detention basin, they cannot move the lot and they have tried to turn it multiple ways. Mr. Rajeshkumar then asked about putting the parking in the back, and Mr. Donato said that, due to the setback, they couldn't move any more than 8 to 10 feet and would only gain the space of one vehicle.

Mr. Frieden then commented that it seemed as though this is what a variance was designed for. He explained that the slope does not allow the applicant to put the building where they want; they need a retaining wall because it is too steep on one side; they cannot put the parking where it is allowed. He opined that anyone would have a problem with this property, and thought that this project would be good for both towns and as a citizen, he thought the process should take place.

In response to questions from Mr. Rajeshkumar, Nanette St. Pierre, one of the property owners, replied that the seven acre lot is not buildable, as there is an intermittent stream on it; if it was buildable, they would have used it. She asserted that the Girl Scouts wouldn't have come to them if they could not have a Worcester address.

With no further public questions or comments, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Feland seconded. All in favor. (The board now deliberated).

The board first asked Ms. St. Pierre about parking in the front of the building that FedEx has, and when the building was built and if the bylaws were in existence? She replied that it was built in 2004. Mr. Rajeshkumar asked her if they applied for a variance for their parking? She was not sure.

Mr. Feland opined that the parking on Century Drive is in all places, and did not think it would stand out or cause substantial harm for it to be in front of the Girl Scout's building as it would look like all the others on the street. (Mr. Olson then read aloud the part of the bylaw stating that parking had to be in the back or on the side of the building; Mr. Feland asked how existing businesses would do that? Mr. Olson replied that he thought they should try to do that going forward).

Mr. Frieden thought that the applicants were trying to create a more pedestrian-friendly environment, but it did not seem appropriate here.

Mr. Olson commented that, first of all, maybe if the building were smaller, they could conform to the bylaws; conversely, with the irregular shape and topographic challenges, and it seems that the surrounding lots are not the same as this one.

Mr. Feland thought that the proposal was in keeping with the neighborhood.

Mr. Femia asked, regarding the setback issue in the back, if it would be possible to move the property line back six feet, and then they would have a 10-foot setback in the back? Mr. Tuttle replied that they would then have the issue of putting the property line in the berm of the detention basin; he said that they asked the owners

to adjust the property line, and they did so. If they moved it further, they would then be obligated to maintain the berm. (In response to a question from Mr. Olson, Mr. Donato said that the distance between the wall and the lot line would be 5.68 feet). Mr. Femia asked, as the retaining wall would be a curving wall, if it could be brought in five feet? Mr. Donato asked Donna Truex (of Bowditch and Dewey) about a drainage easement on the Girl Scouts' property, and she replied that the drainage easement already existed, but they would have part of the basin on their property if they moved the wall in. Mr. Femia then asked Mr. Tuttle how far back the property line could be moved so that the berm would be on the other side? He suggested that perhaps the retaining wall could be moved in five feet, still maintaining 10 feet of setback. Mr. Tuttle replied that this has been looked at, and there would be an issue for trucks and Town and safety vehicles. (The board then deliberated by itself; there were no further questions of the applicants).

Mr. Olson stated the vote on the first variance request, then made a motion to grant the variance to allow parking in the front of the building, and within the 50-foot front setback, according to Section 5.2.B (off street parking), subsection 2 of section B (location and dimensions), subsection C (setbacks). Mr. Rajeshkumar seconded. The vote was 4 "yes" to 1 "no"; the variance was granted; the vote was as follows:

Mr. Rajeshkumar – "yes"
Mr. Olson – "yes"
Mr. Femia – "no"
Mr. Feland – "yes"
Mr. Witkus – "yes"

Mr. Olson then made a motion to vote for the second variance request, reduction of the rear setback from 10 feet to 5.68 feet for a retaining wall of four feet or less, as described; Mr. Rajeshkumar seconded. The vote was 4 "yes" to 1 "no"; the variance was granted; the vote was as follows:

Mr. Rajeshkumar – "yes"
Mr. Olson – "yes"
Mr. Femia – "no"
Mr. Feland – "yes"
Mr. Witkus – "yes"

Mr. Femia reminded the applicants that they need to go to Planning Board for permission of greater than 15 parking spaces, they will probably be asked about handicapped spaces, and also the ANR plan. Mr. Frieden opined that they might be able to take care of all the items at one time. Mr. Femia explained the decision and "no-appeal" processes to them, and once that is done, they can go to Planning Board. They also discussed the ANR process and if that can be done after this meeting.

Public Hearing, Amendment of ZBA Fee Schedule

Mr. Femia informed those present that the public hearing was not closed or continued at the January meeting. Therefore, Mr. Rajeshkumar made a motion to continue the public hearing. Mr. Feland seconded. All in favor. Mr. Femia announced that Mr. Witkus had a suggestion regarding the fees. Mr. Witkus said that he thought that in 2002, a fee schedule for ZBA filings was made, and thought that now, in 2018, costs are 30% higher, so he thought that maybe a percentage, for example \$100.00, could be added to each fee?

Mr. Rajeshkumar agreed that the board needed revenue, but that all prices are going up and that the fees were reasonable and should stay as they were proposed at the last meeting for now and they could be revisited at a later time. Mr. Femia read aloud what the fees would be:

Variance now \$350; proposed to be \$400

Special permit now \$350; proposed to be \$400

Special permit for Accessory Apt. or Home Occupation now \$200; proposed to be \$300

Administrative Appeal now \$350; proposed to be \$400

Comprehensive Permit now \$500 + \$100/unit; proposed to be \$550 = \$150/unit

Mr. Rajeshkumar thought that the Comprehensive Permit fee should be higher, as it involves more work; Mr. Femia suggested \$600 + \$200/unit, which the board agreed with. With no public comment, Mr. Rajeshkumar made a motion to close the public hearing; Mr. Feland seconded; all in favor. Mr. Rajeshkumar then made a motion to approve the fee increases as stated; Mr. Feland seconded; all in favor. (Mr. Femia instructed Ms. Goldstein to send the changes to Karen Pare, Elaine Novia, and the Town Administrator, to be effective March 1, 2018).

Declaration of Covenant for Home Occupation Use Form:

Mr. Olson had developed a draft document for this and Mr. Femia and Ms. Goldstein had made changes to it and gave it to the board members at the last ZBA meeting. Mr. Olson and the board agreed that the new draft of the document was fine to use going forward. Mr. Femia explained to Mr. Feland that there was a Home Occupation bylaw, but no Declaration of Covenant form for the Home Occupation, only for Accessory Apts.

Update on Accessory Apartment Bylaw:

Mr. Femia informed the board members that he reached out to the Building Inspector for help in getting it together, and he will bring it to the Building inspector and the board for review when it's written; he hopes it can be voted upon in March or April, then go to the Planning Board for a public hearing, and hopefully will be on the warrant for the October Town Meeting. Mr. Olson responded that the ZBA board really cannot vote on it; they can give it to the Planning Board, but cannot vote on it themselves.

Update on Aquifer Zoning Bylaw:

Mr. Femia discussed the fact that a public hearing was not approved several months ago by the ZBA due to the Aquifer Protection District and the request by the applicant to modify certain requirements in the District, and Mr. Femia wants there to be a specific bylaw for this, stating that the property in question must meet certain frontage and area requirements. Mr. Olson suggested discontinuing the discussion due to pending litigation.

Cost Certification for Afra Terrace:

Mr. Femia informed the board that MHP finalized the Cost Certification, and determined that the developer was below 20% profit, therefore he did not owe anything to the Town; a letter was sent to Affordable Housing and to the ZBA informing them of this. Chair of the Board of Selectmen, John Hadley, verified this.

Discuss Changing Policy on Mailings Where Petitioner Will Be Responsible for Sending Out Abutters' Notices by Certified Mail:

Mr. Femia explained to the board that he would like the petitioners to obtain their list of certified abutters from the Assessor's Office (as they currently do), but rather than Ms. Goldstein sending out the notices of

the public hearings by regular mail to the abutters herself, the applicant would send them out, by Certified Mail/Return Receipt. Ms. Goldstein would be given the green Certified Mail cards and check to be sure all abutters were mailed notices. The petitioners would also be responsible to send out the decisions of the public hearings to the abutters, Certified Mail/Return Receipt. They would give the green Certified Mail cards to Ms. Goldstein, and she would have a record that the documents were received.

Miscellaneous Mail and Paperwork Needing Signatures:

Mr. Femia discussed notification regarding Dr. Tashjian's court appearances because of non-payment of fines to the Town. He reported that, in December, a notice was sent for a court date, and no one showed up for the hearing as Mr. Femia was advised that the board did not need to appear. The Building Inspector, receiving a notice that there was no decision as no one appeared, reapplied. Mr. Femia and the Building Inspector went to court together on January 31, and the court ruled in favor of Dr. Tashjian. Mr. Femia said that now the situation is in the hands of the Building inspector and the Board of Selectmen.

Review of ZBA Forms:

Mr. Femia suggested to the board that, if they agreed, they will out-source this project to 40B specialist, Judi Barrett. Mr. Femia and the Town Administrator reached out to her; she will take care of the forms, as well as Comprehensive Permit Rules and Regulations, and 40A. He said that it will cost \$150/hour, with less than 20 hours of work estimated by her, and she will only charge for what works. Mr. Femia added that, as she wrote the 40B bylaw, he had confidence in her. The board had questions regarding how this would be funded, due to problems with revenue by the board, and discussed possibly having Ms. Barrett work on less items. Mr. Femia agreed to talk to the Town Administrator to find out where the funds would be coming from for Ms. Barrett, and this subject will be continued to the March 15 meeting.

Future Agenda Items/ZBA Reports-Drew Petition for Special Permit, 107 Central St, and Shaw Petition for Special Permit, 339 Maple Street:

Mr. Femia informed the board that there were two filings for special permits that would have public hearings in March. One involves greater than 100-feet of frontage, but less than 120 feet. He told the applicant that the owner needs to be at the meeting, and when the owner sells the property, the buyer needs to come back and get the special permit amended. Mr. Olson reminded the board of the 35 day period in which to let the other Town boards know about the filings and obtain their opinions and he reminded the board that they cannot close the public hearings if they do not do this. Mr. Femia mentioned the fact that it can be difficult due to when the boards meet.

Next Scheduled ZBA Meeting – Thursday, March 15, 2018

Information Regarding John Benson:

Mr. Femia informed the board that Associate Member John Benson was deployed in the military for one year to the Middle East, and wished him the best.

Town News from Mr. Rajeshkumar:

Mr. Rajeshkumar informed the board of a special Town election on February 27, and a special Town meeting on February 28-both were regarding the proposed new Senior Center for the Town. He mentioned the dates, times and locations of informational sessions and suggested that Town residents try to attend. (Mr. Frieden

informed those present that the Planning Board gave their approval for the Senior Center application the evening before (February 14, 2018).

Recreational Marijuana Conference:

Mr. Femia and Mr. Rajeshkumar attended. There will be a joint committee made up of two members from each board; the board agreed that Mr. Femia and Mr. Feland would be the ZBA representatives to the committee.

Any Items Not Received Prior to 48 Hours Before Meeting:

There were none.

NEXT MEETING **Thursday, March 15, 2018**

MOTION TO ADJOURN

Motion Originator **Mr. Rajeshkumar**

Motion Seconded **Mr. Olson**

Time of Adjournment **9:52 p.m.**

Signatures **Barur Rajeshkumar**

Submitted by: **Toby S. Goldstein**

Date Submitted:

