



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

[Zoning Board of Appeals] Meeting Minutes

**Date / Time / Location of
Meeting**

Thursday, December 6, 2018/7:00 p.m./Selectmen's Meeting Room

Members Present

Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia, Nathaniel Orciani, Charles Witkus, Andrew Feland (Associate Member), Mark Wyatt (Associate Member) and Secretary Toby Goldstein

Members NOT Present

John Benson (Associate Member)

Invited Guests

George Tignor, Interim Building Inspector

Welcome – Call to Order

Time: 7:05 p.m. (by Mr. Olson)

Approval of Previous Minutes 10/18/18

Motion Originator Mr. Femia

Motion Seconded Mr. Rajeshkumar

Treasurer – Financial Report Mr. Olson reviewed the latest financial statement, dated 10/31/18

Motion to Accept N/A

Seconded N/A

At 7:05 pm, Mr. Olson called the meeting to order; he announced that all five of the Full Members were present.

Minutes of October 18, 2018 Meeting (Executive Session):

After review of the draft minutes by the board, Mr. Olson noted some changes that needed to be made. Mr. Femia then made a motion to accept the minutes as amended. Mr. Rajeshkumar seconded. All in favor.

Policy Regarding Refunding of Filing Fees:

Mr. Olson posed a question to the board, speaking in general, if the board finds that a petition is later withdrawn after the filing fee had been paid, what should the policy be? Mr. Femia thought that it should depend on the petition, because the Secretary might have had to do more work in preparation, along with the newspaper ad that must be placed. Mr. Rajeshkumar added that some petitions are not withdrawn until the last minute, so they must take into account the Secretary's work and if, for example, Town Counsel was involved. Mr. Olson agreed that each case might be different. Mr. Femia suggested adding up all expenses, and subtracting that from the filing fee that was paid. He also suggested putting a clause into the bylaws, that if the petitioner withdraws, he/she will not get all of the filing fee back, and agreed that each case is different and the costs need to be broken down.

2019 Meeting Schedule:

Mr. Olson mentioned that the next meeting is scheduled for January 17m 2019, and asked if everyone was still available? They all were, and mentioned that they are available on the third Thursday of each month. Mr. Rajeshkumar and Mr. Femia asked Ms. Goldstein to make sure that Nancy Lucier posted the full year of ZBA meeting dates on the Town calendar.

Public Hearing, Gary and Kenneth DeWolfe and Joseph Evangelista, Petition for Variance, 241 Woodland St. (Lot 5 – Rev.) for the 1) construction of four (4) dwelling units extending into the Single Residence-zoned portion of the lot and 2) construction of two duplex buildings on one lot, and:

Public Hearing, Gary and Kenneth DeWolfe and Joseph Evangelista, Petition for Variance, 239 Woodland St. (Lot 6) for the construction of two duplex buildings on one lot:

(Atty. George Kiritsy and Joseph Evangelista represented). Mr. Olson noted that, because of the overlap of the two filings, he had them placed on the agenda at the same time so that the applicant could present them both together or separately. Mr. Kiritsy said that he would rather hear them together. Mr. Orciani read both public hearing notices aloud. Mr. Kiritsy said that he was representing the applicants and submitted the applications. He explained that his presentation would be almost identical for both lots and said that they were requesting building two habitable buildings on each lot. (He presented material on a projector). He pointed out where each lot was located, and noted that the zoning line for the properties was at an odd angle to the lots. He said that, at 241 only, they want to push the zoning district back, but wanted to talk first about the two habitable buildings per lot. Mr. Kiritsy noted that the properties were split by zoning lines. He explained that Ron Thunberg went out to survey the properties and determine uses for the properties, and they decided on building a fourplex on each lot, as they are in the business zone and the frontage is in the business zone. Mr. Kiritsy asserted that, in West Boylston, they could push the business zone use 30-feet into the residential zone (on rolled maps the intended work was shown, and on the wall, what Mr. Thunberg did). Mr. Kiritsy continued that Mr. Thunberg came up with long row houses along Woodland Street, in the business zone or business zone plus 30-feet. (He showed row houses on Shrine Ave. to the board which would be similar in design). He opined that long row houses could limit driveway access. Mr. Thunberg thought these properties could use relief by seeing if they could break down the fourplexes into two buildings, separating them into duplexes on a single parcel. He further explained that they could push one duplex back, and have one in front., with a single driveway for each. Pushing the house back would have it be even with the neighboring properties so that the house wouldn't be in back of another house (second application), and so there would be two duplexes rather than a long rowhouse.

(As people in the audience were commenting, Mr. Olson announced that, after Mr. Kiritsy's presentation, the public could then speak).

Mr. Kiritsy summarized that there would be two duplexes with gables, with a single driveway, off Woodland Street, placed further back so as to not be on top of the road; he opined that it would be a nicer product, and noted that Mr. Thunberg recommended it.

Mr. Kiritsy continued that the second application applied to the lot further up the hill. He said that the zone line was 30-feet and asserted that it was rather tight. He explained that usually the zone line runs parallel to the street, but this one does not. The applicant would like to push the zone line back to be consistent with the other houses, which he opined would be better off with this than having eight units in a row house.

Mr. Femia then asked Mr. Kiritsy if he reviewed the opinion letters from Planning Board, and asked him how what he said differed from what Planning Board said? Mr. Kiritsy replied that Planning Board's discussion regarded whether the lot was buildable even as a fourplex. They referred to a meeting with Town Counsel, and a situation regarding Crescent Street; Mr. Kiritsy said that he contacted the owner on Crescent Street, who asserted that they never went to Planning Board, and that there was nothing in writing from Town Counsel, perhaps only something verbal. Mr. Kiritsy opined that it was difficult to give an opinion of what another lawyer said. He asserted that the Planning Board opinion was contrary to case law. He asserted that this issue was decided thirty years ago; he mentioned that there were a couple of cases from the appeals court where it was ruled that land in a more restricted zone can be used for frontage and area and for dimensional requirements, but not for use. The board then discussed that they thought Crescent St. was before the Planning Board or perhaps there was a roundtable discussion. (Mr. Kiritsy then read an example from a case called Moore vs. the Town of Swampscott, which relied on Tofias vs. Butler, both from 1988).

Mr. Olson then noted with Mr. Kiritsy that they had not applied for relief for an increase in density; Mr. Kiritsy replied that this was correct, and Mr. Evangelista responded to the board that Lot 5 was 41,000 square feet in area. Mr. Kiritsy showed the board on the plans what the applicants intended to do with the lots. Mr. Kiritsy said that Lot 5 is single-residence, but asserted that the owners can go back 30 feet because it is a business zone. Referring to the Planning Board opinion, Mr. Femia read that the Planning Board asserted that it was false as it only appeared that there was 7,000 square feet of area in the business district for a multi-family house (Sec. 4.3.A requires 10,000 square feet for a multi-family unit) so that there wouldn't be enough area for two units. Mr. Kiritsy responded that Planning Board was saying that all square footage needed to meet the density requirements for a fourplex must come in the business zone, and that they cannot tack on area that's outside that zone for density square footage, and he cited similar cases. Mr. Olson asked the board to leave this issue alone because the applicants are not asking for a variance due to density. Mr. Kiritsy questioned why Planning Board was even giving an opinion on this, as the Building Inspector and ZBA were the ones to decide on it initially. He replied to Mr. Rajeshkumar that they subdivided the lots to be 40,000 square feet. They opined that there will be a better product the way that they proposed.

Mr. Witkus then asked to see the houses on the plan; Mr. Kiritsy showed him. At Mr. Femia's suggestion, Mr. Olson then explained to the public present what constituted a variance to lead into discussion of what was being decided upon. Next, he summarized with Mr. Kiritsy what the applicants were asking for. He said that they want to build two dwellings on each lot; current zoning allowed one habitable building on one lot, and as they are asking for two, the question was how does this meet the standard? Mr. Olson gave the example of Sterling Street, where the owner did not ask for a variance, but a special permit because the existing hotel was nonconforming to zoning, but this situation was different.

Mr. Kiritsy responded that the standard for variance is difficult; he stated that the shape of the lot was fairly ordinary, and there was not any unique soil either, but the hardships were the slope, which was deepest on the front of the lot going down to the street, and the zone line ran at an odd angle to the property (which he considered "unique" to this property) and was not parallel as it usually would be. He said it would be easier and better financially for them if they could build on the flatter area of the property.

In response to a question from Mr. Olson, Mr. Kiritsy said they would extend Lot 5 30 feet beyond the zoning district, to a line parallel with the street, 0 feet on the east side, to 120 feet on the west side, with a triangle of business use (he showed this on the plans). He asserted that the bylaws allow a 30-foot extension, so this was a dimensional variance.

In response to another question from Mr. Olson, Mr. Kiritsy responded that they want to put one duplex completely within the single residence district, within the 30 feet. Mr. Olson said that there are a number of lots split between the business and residence districts in town (he named some streets). Mr. Kiritsy reiterated that zone lines are usually parallel to the street.

Mr. Kiritsy then asserted to Mr. Femia that the front building on Lot 5 would not be entirely in the single residence district; about half of the building will be in the business district, and half in single residence, and asserted that the bylaws permit moving of the zone line back 30 feet, and then the zone line will be parallel to the street; the other lot did not need to be pushed back any further. (Mr. Kiritsy was pointing this out on the plans while explaining).

Mr. Femia then asked about Lot 6; Mr. Kiritsy explained that Lot 6 needed a variance for two buildings. Mr. Olson, for the record, stated that the ZBA received feedback from the following Town boards: Planning Board, Board of Health, and Conservation Commission (all on file). Mr. Kiritsy explained that these properties were greater than 200-feet from wetlands, and added that his client had an advisory ruling letter from MDC (Mr. Femia explained that MDC was now DCR), and noted that, since 2002, all of this property was non-MDC property.

Mr. Olson next opened the hearing to public comment, and instructed the audience to state their names and addresses loudly for recording purposes, and they would have a short time to speak. First to speak was Gus Pingeton of 554 Prospect Street. He discussed his background of involvement with the Town. He explained that, after the previous property owner Mr. Larson died and the property was sold, he became concerned; he asserted that the property was cleared of trees. He asserted that water gushes down Prospect Street near Pinecroft Dairy, past his property, and was afraid of runoff in the Spring and opined that accidents occurred because of the water. Mr. Pingeton also noted that there were Asian Longhorned Beetle (ALB) experts that visited him, but wondered how the property in question was cleared and trees taken away because of the beetles; also there were trucks and excavators used and he opined that his stone wall collapsed from the vibrations. In response to a question from Mr. Olson, Mr. Pingeton talked about noise from the developing of the property and how he could not sit in his yard as he used to do. (Mr. Rajeshkumar responded that any construction will cause noise). Another resident, who did not identify herself, asked if the clearing was approved? Mr. Rajeshkumar replied that this would not be up to the ZBA. Mr. Pingeton opined that there will be a village there one day, and that DPW should be made aware of all the drainage.

Next to speak was Tammy Hubbard, 15 Pinecroft Ave. She lives in the back of the property, where the brook is located, and noted that the brook overflows and runs into her basement. She had just installed a retaining wall and grading. She was concerned that, if the applicants push back their building and cut down more trees, that it will cause more flooding, and asserted that the Conservation Commission knew about this problem. She said that water gushes into her basement and then down the street. Mr. Kiritsy commented that the brook in

the area is much further back, and that the applicants had not gone near that. Mr. Femia asked Mr. Kiritsy if there were ALB there before the trees were cleared? Mr. Evangelista responded that they had a certified, reputable person to clear it. (Mr. Evangelista then asked if he could have five minutes to speak? A woman in the audience responded, saying that "he'll wait").

Next to speak was Pat Arnow, 6 Pinecroft Ave. He commented that, regarding a business zone vs. a single residence zone, it was true that most of the time the zoning lines are drawn parallel to the street because that's where the businesses are, and the property is parallel to Prospect Street, and the businesses are on Prospect Street (Mr. Arnow responded to Mr. Femia that he did not abut the property, but lives within 300 feet).

Next to speak was Patricia Keith, 565 and 559 Prospect Street. Ms. Keith verified how many houses were allowed to be built; Mr. Olson replied that business district allows multifamily use, up to four units per lot. Mr. Feland opined that the square footage of the lots that are business did not justify this. Mr. Olson responded that the applicants are not asking for variance for density and he wanted to focus on the two variances that were requested.

Next Andrew Feland, 101 Central Street, Associate Member of ZBA, spoke (as a member of the public, not the board). He referred to the aforementioned Swampscott case, where there was 8-feet of frontage, and opined that there was a huge legal stretch regarding this evening's case. Mr. Kiritsy responded, that in the other case, the lot had frontage on two different roads, and within the residence zone had frontage but not area, but the business zone did not have frontage but had area, and the Court said to combine the frontage and area, but for the most restricted use; the appeals court said the structure had to be in the multifamily zone, and that you can combine for area. He said, in the Tofias case, the ruling was that they could combine all their land as a whole for dimensional purposes, not necessarily for use (depending on the use). He also believed that this was mainly a Building Inspector issue.

(Ms. Hubbard then showed the board photos of flooding on her property; Mr. Kiritsy went up to look at them. Water from the outside was flowing into her basement, and she opined that, if the applicants push back further on the property, more water drainage will go down towards her property.

Elizabeth Arnow, 6 Pinecroft Ave., spoke next. In response to a question from her, Mr. Evangelista replied that there would be three bedrooms in each unit. She remarked that there could be anywhere from eight to sixteen children added to the school system. She asked if there was ledge there? Mr. Evangelista replied that he was not aware of any, and Mr. Kiritsy replied that they would have tried to use soil conditions as hardship for the variance.

Joseph Evangelista, 145 Prescott Street, one of the applicants, spoke next. He gave a history of the property and what had been done there. He gave examples of options for what could be done on the property, but felt that he built a new house next door and will keep residences there as well. He mentioned work that he did on Shrine Ave., and opined that four units made the area better. He opined that his planned project for these two lots will look really nice and be best for the area. Mr. Evangelista commented that most of the condominiums and apartment complexes built in town were duplexes and multifamily dwellings. He discussed in-law apartments and that there is a part of the bylaws that blocks cottage housing, not condos, from single-family residence lots.

(Mr. Pingeton, who spoke earlier, wanted it to be placed in the record that he was opposed to the proposal). Next to speak was Liz Rettig, 30 Osgood Ave. She said that she was opposed also, and asked what was wrong with a single house? She called the proposal "ridiculous"; she commented that they once had wildlife outside of their homes, but said that there were now no trees, and they had noise and traffic. Mr. Kiritsy asked her

if she would prefer the proposals or big row houses that were built before elsewhere? She commented that he was "scaring" the neighbors. Mr. Kiritsy asserted that this would be maximizing use of the property, and the Building Inspector would have to decide if it's usable.

Mr. Feland then asked about a previous project proposal for 44 units on 11 ½ acres that Mr. Evangelista wanted to build? Mr. Evangelista replied that this was refused.

One resident, who was not identified, commented that the Town's boards should be listened to, as they are elected officials who have opinions on the subject. Ms. Hubbard asked what the Conservation Commission commented? Mr. Olson responded that, if the project goes forward, the applicants will have to see the Conservation Commission if there are any wetlands located within a certain distance from the building.

Mr. Witkus then asked what a Quitclaim Deed was? Mr. Kiritsy replied that it is an instrument of transfer of title, which the grantor signs, and conveys interest to the grantee; he said if the consideration is for money or as a gift (to a family member), if it is less than \$100, no transfer tax needs to be paid

With no further comments or questions from the public, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Femia seconded. All in favor. Mr. Olson announced that the board would now deliberate. Mr. Rajeshkumar commented that he did not see any hardship and therefore did not see issuing the variances. Mr. Femia agreed and also did not see criteria for variances being met. He also saw a problem with the buildings. Mr. Femia asked Mr. Kiritsy if they ever thought of making one lot and four buildings? Mr. Evangelista opined that there would be the same challenges, and Mr. Kiritsy responded that they want to take two fourplexes and divide them, rather than make an eightplex. Mr. Olson then thanked Mr. Kiritsy for his presentation and appreciated his comments, and noted that the applicants have some desire to make the buildings fit in the existing neighborhood, but he did not see sufficient evidence this evening that the three variance requests met the criteria.

With no further comments by the board, Mr. Femia made motions for each variance request. First, for Lot 5, the motion to grant a variance for two duplex buildings, according to Section 2.4 of the zoning bylaws; Mr. Rajeshkumar seconded. The vote was 0 "yes", 5 "no" votes; the request was denied unanimously (a super-majority was required).

Next, Mr. Femia made a motion to grant the variance for Lot 5 to push further back, according to Section 3.4G of the zoning bylaws; Mr. Rajeshkumar seconded. The vote was 0 "yes", 5 "no" votes; the request was denied unanimously.

Finally, for 239 Woodland Street (Lot 6), Mr. Femia made a motion to grant a variance for two duplex buildings, according to Section 2.4 of the zoning bylaws; Mr. Rajeshkumar seconded. The vote was 0 "yes", 5 "no" votes. Mr. Olson explained what the votes meant to the audience, and that all three variances were voted down.

Public Hearing, Melissa Silva, Administrative Appeal of Issuance of Building Permit No. B-18-205 for garage construction to Justin Gabriel, 57 Goodale Street:

(Mr. Olson recused himself, as he is an abutter. Mr. Rajeshkumar was to take over the Chair's role for this public hearing). Mr. Rajeshkumar called the public hearing to order. He called up Mr. Feland to take his place on the board, while he sat in as Chair. He stated the names of the members sitting on the board for the hearing. Mr. Orciani read aloud the public hearing notice). (Melissa Silva and Michael Sowyrda represented for the applicant's presentation). Mr. Rajeshkumar explained the subject of this Administrative Appeal. He explained that a super-majority vote would be needed to grant or reject the appeal. He explained that the petitioner will give an

argument, then the property owner, then the board will speak. He said that the Building Inspector might have to give comments, then the board will present opinions of other boards (if applicable), and then the public would be able to speak.

Mr. Sowyrda began his presentation. He explained that the petitioner, Ms. Silva, was an abutter to 57 Goodale Street, the property in question. He explained that Justin Gabriel, owner of 57 Goodale Street property, wanted to build a 48-foot by 90-foot garage, over 30-feet high, and that the acting Building Inspector, George Tignor, issued a building permit for this garage, for accessory use. Mr. Sowyrda said that he and Ms. Silva argue that it's not accessory because:

1. The garage would be almost three times the size of the main structure on the property.
2. Mr. Sowyrda explained that they wrote to Mr. Tignor before he issued the building permit, and explained that a Stop Work order was issued by the prior building inspector (dated 8/31/18). He said that they were concerned with the project because of size and accessory use question. Mr. Tignor wrote back to them, explaining that there was a reduction in the size he wanted, and it was less than four times the size so it qualified as accessory. Mr. Sowyrda opined that this was not based on fact, and he also asserted that the bylaw itself provides for accessory use to be incidental to main use, and not detrimental to the neighborhood. He mentioned that it was a pre-fabricated, four-car garage, three times the size of the home, and opined that it was not customary, and that it was detrimental to the neighborhood, as was demonstrated by the appearance of many neighbors this evening at the public hearing.

Mr. Sowyrda added that he had letters from real estate brokers, who said that there would be financial damage to the residents' properties. He showed the board a photo of the garage to date, the view being from Ms. Silva's front door. Finally, he said, if the board thought that Mr. Gabriel complied with the two points that he just mentioned, the Planning Board issued an opinion stating that the lot was undersized, and according to the bylaws accessory use has to comply with dimensional requirements; also the structure would be nonconforming if it's on a nonconforming lot and the owner should have obtained a special permit for this. In summary, Mr. Sowyrda summarized that the garage was "huge", and it is at the front of the property, not customary, and detrimental to the neighborhood, so Ms. Silva does not want to see that. He asserted that, if it were smaller, they would not be there this evening. He hoped that the board would uphold the application, ask for a Cease and Desist order, and have Mr. Gabriel build a garage of a more normal size.

(Mr. Rajeshkumar then asked Mr. Tignor for any comments). Mr. Tignor asserted that the square footage is three times the size of the house, not four, as he had gone through the garage and house. Mr. Sowyrda responded that the size of the garage is still 4,000 square feet and asserted that this was used as part of the decision making.

(Mr. Femia then asked Mr. Sowyrda to come forward and show him on the plans where Ms. Silva's property was located, and the right of way. Ms. Silva came forward also). In response to a question from Mr. Femia, Mr. Sowyrda replied that Ms. Silva's property is about 120-feet from the garage. Mr. Femia then called up Fanny Demorales at 43 Goodale and asked her to look at the map; she responded that she abuts the property. Ms. Demorales added that 15 trees were taken out, and that she sees the "giant" garage from her home. (The board then looked at the map, and determined where various abutters were located, along with the garage).

In response to a question from Mr. Witkus, Mr. Sowyrda replied that the photo was taken in October, 2018; the Stop Work order was given in August, 2018, and the new building permit was issued in late October.

Mr. Femia then cited the Planning Board's comments, regarding Sec. 5.1 in the bylaws for Accessory Use; they stated that this would not include garage space greater than three cars, except for only the owner's use. He opined that it was very broad, explaining that, if it is the owner's use, it could be greater than three cars, unless he is renting the space, and thought that this was not clear. Mr. Sowyrda responded that, assuming greater than three cars are allowed, what if it is detrimental to the neighborhood, not customary, and non-conforming? (Mr. Feland then asked what was going to go into the building? Mr. Sowyrda replied that they should have Atty. O'Neil answer that).

Mr. Femia then referred to complaint letters received and given to the board and plaintiff; he asked why the letters were not from towns closer to West Boylston? Ms. Silva replied that Sue Meola, one of the realtors, could not attend the meeting and did not write an opinion letter as she planned to come to the meeting. Mr. Femia opined that every town is unique which would affect the opinions, but Mr. Sowyrda and Ms. Silva said that the realtors did come here to look at the situation.

(With no further questions or comments, Mr. Gabriel and Mr. O'Neil came forward to present their case). Mr. O'Neil began by saying that none of the three building inspectors raised the issue of size of the garage, and only one mentioned where the setback line is measured, which had to do with the fact that the access to the property was over a private right of way; however, the petitioner had the same situation but on the other side of the right-of-way. He continued that the garage is made with a custom-made kit, made to Mr. Gabriel's specifications. He and Mr. Gabriel met with the first Building Inspector (Bentley Herget) first, and measured the setback from the center line of the right-of-way (which he said is instructed in the bylaws), but asked if it is straight or not? He said that Mr. Herget measured from the center line, but there is a triangle in the middle; then he asserted that Planning Board signed off on it. Mr. O'Neil asked where the measuring of the setback distance should be done? He reiterated that Mr. Herget said it should be measured from the center of the right-of-way, and the building permit was issued.

Mr. O'Neil continued that the garage is a pole barn structure, and it was then ordered and paid for. Then the Mr. Herget left his position, and the interim inspector (Chris Lund) was of a differing opinion of measuring the setback line (he measured it from the edge of the property), and this led to a Cease and Desist order, not because of size, but because it was too close to the right-of-way. Mr. O'Neil then explained that he filed a challenge, to go to the ZBA to appeal the Building Inspector's decision. But Mr. Gabriel decided to reduce the size of the garage by 10 feet (and essentially "threw away" 10 feet of the structure as it was ordered already), which pulled it back from the right-of-way and it was now in compliance with the setback, and he asserted that this was the only issue with the Cease and Desist. Then, the current Building Inspector (Mr. Tignor) agreed that the setback issue was alleviated, but size of the garage was not mentioned. Mr. Gabriel told the Building Inspector that the garage would be only for his use, to store several registered vehicles (he went on to describe several of the vehicles). Mr. O'Neil admitted that the garage was large, but opined that there are barns in Town that are probably as big, and Mr. Gabriel was sent a certified letter stating that the garage must be for his own personal use. Mr. O'Neil then reiterated that Planning Board said that anything greater than three vehicles is not allowed, unless it is for the owner's use, and opined that this is clearly stated, not broad as was opined previously. He also asserted that there was nothing in the bylaws stating that accessory use cannot be greater in size than primary use, and explained that the garage is supporting the residential use of the property as it will store and keep personal property for the owner. Mr. O'Neil commented that Planning Board thought that the accessory structure shouldn't be greater than 25% of the footprint of the primary structure, but opined that probably every garage does not comply with that, and that one has to look at the use of the property, and that all three Building Inspectors would have had to be wrong; and they interpret the bylaws. He said if people think there should be a limit of vehicles, that they have to go back and change the bylaws.

Mr. O'Neil continued, regarding the nonconformity of the lot, this relates to area and frontage; access is off a private right-of-way, and asserted that there is a provision, where there is an exception for single and two-family uses, and someone would have to seek a special permit for modification. He continued, that in Chapter 40A, Sec. 6, regarding nonconformity, which in this case is in area and frontage, there would have to be an increase in nonconformity; that doesn't apply here. Mr. O'Neil summarized that the plaintiff is in compliance with size requirements and setback requirements in the bylaws, and fulfills all dimensional requirements.

He continued, that the location where the garage is was a tennis court, 60' x 120', with a 12-foot high fence. It was there when he purchased the property, but he pulled it back. He cited a letter from a broker (in the application packet), which is based on a 6,000-square-foot garage, and this one is not that big. Mr. O'Neil also commented that, in the Planning Board opinion, they said that the dimensions were 90' x 60' (Mr. Feland added that the 12-foot overhang was included, and Mr. Rajeshkumar said that it was a typo). Mr. Feland commented that the garage was 30-feet high, and asked why it needed to be that high? Mr. O'Neil responded that it was fully compliant with its height, and explained certain features such as the width and type of roof that were reasons for that. Mr. Gabriel added that a basic RV vehicle needs 18' in height to accommodate it, as it is 12-13-feet high. In response to a question from Mr. Witkus, Mr. Gabriel replied that the garage would be for him personally, not for his businesses, and that he had commercial properties in other towns. Mr. O'Neil added that supposed rumors are not true that he is using the garage with his business, and reiterated that the Building Inspector sent a letter that no other use but residential was permitted there. In response to a question from Mr. Feland, Mr. Gabriel replied that his businesses involve motorcycles and gun retail. In response to a question from Mr. Rajeshkumar and Mr. Femia, Mr. O'Neil gave the square footage of the garage as 35,763 square feet. Mr. Gabriel added that the size of the house (total living space) was 3,600 square feet. Mr. O'Neil continued that the first building permit was given for 48' x 100' garage. Mr. Rajeshkumar commented that the Planning board discussed 60' x 100 feet in their letter; Mr. Gabriel explained that this was for the first building permit, and they were factoring in the overhang. Mr. O'Neil explained that the footprint was 48' x 90'. Mr. Gabriel commented that the first Building Inspector included the overhang. In response to Mr. Rajeshkumar, Mr. Gabriel replied that he has an in-ground pool. He also replied to him (regarding the garage structure) that he obtained the garage kit from EPS Building Systems, it has a wood and metal roof, and the color is matched to his house. Mr. Rajeshkumar then mentioned that the petitioner had argued that the boundary lines were not clear. Mr. O'Neil asserted that these arguments were false, and that they had it surveyed three times as the Building Inspector required it so they provided it.

(Mr. Femia then called Mr. O'Neil and Mr. Gabriel forward and showed them the site plan, then asked Mr. Tignor how he measured the center line of the property? Mr. Tignor replied, that he read all the documents, interpreted the bylaw and had them measure from the property line; the garage was too large to fit into that plan otherwise. Mr. Tignor replied to Mr. Femia that they met all the setbacks from the property line, as was stated in the registered surveying document. Mr. Femia then asked, as the Planning Board considered the overhang as part of the overall structure, and considered it a 60' x 90' structure, did Mr. Tignor consider it as that? Mr. Tignor replied that, customarily, the overhang does not figure into the footprint, so basically it is a 48' x 90' structure. Mr. Rajeshkumar noted that the first Building Inspector figured it into the footprint.

Mr. Femia continued, that there was a tennis court, 60' x 120', which was in the right-of-way, with an area of 7,200 square feet, but the 48' x 90' garage is only 4,320 square feet. (Mr. Tignor added that the garage is only about 25 ½' tall, not 30', according to the plan, in response to Mr. Feland).

Mr. Sowyrda then commented on the previous comments by Mr. O'Neil. He said that the magnitude might disqualify accessory use, citing a particular case. Also, he mentioned Mr. O'Neil's comment that more than three vehicles could be stored there, so he questioned if he could put a 25-car garage on residential property? He

also questioned the location of the garage, giving as an example that barns generally are not constructed in front yards. And, he disagreed with the square footage of the house, and asserted that Town records give the area as about 17- or 1,800 square feet-he had not seen any evidence to the contrary; Mr. Rajeshkumar agreed and asserted that it was 1,750 square feet, with a 500-foot addition. To clarify, Mr. O'Neil stated that the house is split, with the lower level as the living space; he asserted that the Assessors do not treat that as living space, so there is actually more living space than what they indicate. Mr. O'Neil also asserted that, regarding the provision in the bylaws that says that greater than three vehicles is not accessory use, it can be if it's for the owner's use; if the bylaw is silent on the issue, it is left open-ended and he believes that, if it's the owner's use and supportive of his residential use, that it is allowed. Also, he said that the bylaw controls size with setback requirements, and it is dealt with through permits (he gave the example of having a 25-vehicle garage, and for the size of it and the setbacks the lot would have to be huge).

Ms. Silva submitted another case example, and Mr. Femia opined that it had nothing to do with this evening's case; Mr. Sowyrda responded that, although the facts are not exactly the same, the court found that accessory use could be disqualified because of magnitude of the structure. Mr. Feland opined that it seemed that accessory use in that case was regarding a home occupation, and does not apply here.

(Mr. Rajeshkumar then opened the public hearing to public comment). First to speak was Christine Delaney, 59 Goodale Street. She discussed the fact that she lived in front of the property, across the right-of-way. She opined how beautiful the area was when the tennis courts were there, which had exceeded the limit in area; now she opines that the garage is enormous, with a gravel base, and called it "monstrous", while the previous attractiveness was taken away. She said that it might be allowed, but did not believe that it was helpful to the neighborhood.

Mr. Rajeshkumar then asked for the opinions of other Town boards besides the Planning Board; Mr. Femia then asked Ms. Goldstein if there were opinions of other Town boards? (He explained to the audience that this was part of the permit procedure). Ms. Goldstein commented that the Conservation Commission opined that this was not in their purview, and Board of Health did not give an opinion. Next, a resident who was not identified asked about the overhang and if it added to the size of the footprint? Mr. Tignor replied that the overhang was not customarily part of the footprint. He went up to the front, and explained that an "as-built" plan has to be supplied when the work is complete, and commented that he had Mr. Gabriel make sure it was done correctly so that when he goes out there to look at it when finished, it is constructed in agreement with the plan. This resident also asked, regarding the overhang, if any drainage would go into the right-of-way and if there was any plan for that? Mr. Tignor replied that he told Mr. Gabriel to apply for a runoff system to go behind the garage, but he had not seen plans for that. Mr. Gabriel explained that his engineer had that. (Mr. Femia said to Mr. Tignor that they would have to see that, and Mr. Tignor added that they would do that before any gutters, for example, would be installed. Mr. O'Neil responded that they will do that. Mr. Femia said to Mr. O'Neil that the board wants to be sure that this is done).

(Mr. Femia then read the Planning Board opinion letter, dated 11/19/18). (Mr. Rajeshkumar then briefly summarized the building permit history for the property). He reiterated that the building permit was first issued by Bentley Herget, for a 48' x 100' structure; then, Interim Building Inspector Chris Lund decided that it did not meet the minimum setback, on 8/31/18. Next, Mr. Tignor gave a building permit for a 48' x 90' structure. Now, an Administrative Appeal has been filed. He continued, the garage is supposed to be accessory to the primary structure, which is the house, 1,750 square feet in area, and the garage is 4,320 square feet in area; it is 30-feet high, made of wood and metal, and cited Section 5.1 of the bylaws, which states that accessory use is permitted on

the same lot when it is not detrimental to the neighborhood, and not if there are greater than three vehicles contained in it, except if they are of the owner's use.

Another resident, Matt Nasuti of 63 Goodale Street, then spoke; he wanted people to note that this was a land-locked property, and this structure was in Mr. Gabriel's front yard, and suggested to everyone that if they could find another property in this or any town with something that big in the front yard, he would be surprised. He noted that the neighborhood can see it from their front and back yards. (Mr. O'Neil then noted as a clarification that the Building Inspector testified that the height of the garage is closer to 25 feet).

Next to speak was Linda Ritter of 69 Goodale Street. She asked what constituted something being detrimental to the neighborhood? Mr. Sowyrda responded that it can affect property values; regarding its use, it can cause congestion and affect the aesthetics of the neighborhood; the board will have to decide if there is a sense that it will cause damage to the neighborhood; (he asked for a show of hands as to who was at the meeting this evening for this subject), and he opined that people not even present this evening may see this from their backyards. Mr. Sowyrda asserted that, initially when Mr. Gabriel asked for a garage, that he never said it would be like this. Mr. Sowyrda replied to Mr. Rajeshkumar that, online, he read that the size of a four-car garage would probably be around 1440 square feet, and he said that he could not imagine a 30-foot high garage in a front yard, in a pastoral community, and considered it detrimental.

Mr. O'Neil responded, that what is detrimental is opinion, and gave examples of accessory uses. He mentioned things such as noise and dust that would be considered detrimental, and opined that it was hard to define in this case. He asserted that the garage was supportive of Mr. Gabriel's living on his property, and continued that the property is well-maintained and he completely renovated it, and that the garage was a high-quality, expensive structure, which matches his house. He asserted that, the way the bylaw is written, Mr. Gabriel was entitled to develop his property, and that the bylaw would have to be amended to make it more specific. He also suggested that the people support their building inspectors, and reiterated that all three of the inspectors would have had to be wrong.

Fanny Demorales from 43 Goodale Street spoke next. She explained how she and her family lived there over twelve years; she asserted that Mr. Gabriel took down more than 20 trees, she opined that the neighborhood should agree on this, and opined that the garage was a "horrible thing" in the center of every house and that no one in the neighborhood was happy about this. (The audience clapped after her presentation).

Next, Tim Shea at 55 Goodale Street compared the property to the property off Flagg RV's new property and said that they have to look at it every day.

Melissa Silva, 55 Goodale Street, then spoke, and asked about the lighting there. Mr. Rajeshkumar then asked if Mr. Gabriel had floodlights? Mr. Gabriel replied that he hadn't decided on that yet. Mr. Tignor replied that Mr. Gabriel will have to apply for an electrical permit first. Ms. Silva then commented that she owned the right-of-way and pays taxes for it, and asked how the garage was going to be accessed and if Mr. Gabriel was allowed to pave a strip? In response to Mr. Femia, Mr. O'Neil replied that the right-of-way was constructed long ago, and noted that there is a Planning Board approved plan for it. Mr. O'Neil replied that Mr. Gabriel intended to use the right-of-way and thought there was no problem with that. Ms. Silva asked if Mr. Gabriel could do paving? Mr. O'Neil asserted that Ms. Silva owned the right-of-way subject to Mr. Gabriel's right to pass; he added that Mr. Gabriel had a right to access his house, but Mr. Silva asserted that he has to enter the way he did before. Mr. O'Neil also asserted that Mr. Gabriel had rights on the entire right-of-way, but Ms. Silva asserted that, in her deed, he only had access to a certain part of it to park his cars. Mr. Sowyrda responded that they were concerned with area of paving, and Mr. O'Neil repeated that they had rights to use the entire right-of-way.

With no further comments or questions, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Orciani seconded. All in favor. Mr. Rajeshkumar reminded everyone that the board needed to have a supermajority vote to pass or turn down the request of the petitioner. The board discussed that a "yes" vote meant revoking the building permit, and a "no" vote meant not doing so. Mr. Femia then made a motion to revoke and declare the building permit No. B-18-205 for the attachment of a garage, 48' x 90', at 57 Goodale Street be null and void. Mr. Feland seconded. Mr. Rajeshkumar reminded the board that revoking the permit required four or more "yes" votes.

Mr. Femia then opined that the bylaw is the bylaw, and the Building Inspector made it clear that Mr. Gabriel could build this structure. Mr. Rajeshkumar said that Section 5.1 in the bylaws was clear; accessory use is permitted, if it is not detrimental to the neighborhood. He gave the example of a four-car garage; would that be detrimental to a normal single-family residence? He thought "yes". He opined that it looked like a business or commercial zone, and that it did not "go" with the neighborhood. He also said that, when the bylaw was written, that no one expected four or more vehicles, and he understood that there is no size restriction in the bylaws, but the question is if it is detrimental. Mr. Feland said that he was torn, because he understood the bylaws and use allowed, but agreed with Mr. Rajeshkumar on the neighborhood effects.

The board then voted as follows:

Mr. Feland – "yes"

Mr. Orciani – "yes"

Mr. Rajeshkumar – "yes"

Mr. Femia – "no"

Mr. Witkus – "yes"

The vote was (4) "yes", (1) "no", and (0) abstained; the motion carried.

ZBA Fee Schedule Format, Including Use of Outside Consultants:

Mr. Olson said that this should be placed on the agenda for the next meeting.

Next Scheduled ZBA Meeting: Thursday, January 17, 2019, at 7:00 p.m.

ZBA Monthly Financial Report:

Mr. Olson read over the latest report, dated 10/31/18.

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn at 10:15 p.m. Mr. Femia seconded. All in favor.

NEXT MEETING

Thursday, January 17, 2019, 7:00 p.m.

MOTION TO ADJOURN

Motion Originator Mr. Rajeshkumar

Motion Seconded Mr. Femia

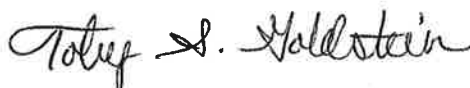
Time of Adjournment 10:15 p.m.

A handwritten signature in black ink, appearing to read "Nathaniel Orciani", with a long horizontal flourish extending to the right.

Signatures

Nathaniel Orciani

Submitted by: Toby S. Goldstein

A handwritten signature in black ink, appearing to read "Toby S. Goldstein", written in a cursive style.

Date Submitted: 1/17/19

