



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

140 Worcester Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

October 6, 2016 – Special Meeting

Chair: David Femia

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

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

Members Absent: None. **(Note: Kristina Pedone resigned from the ZBA effective 9/29/16; the board was notified after the 9/29/16 meeting, of which she was still a participant).**

Mr. Femia called the meeting to order at 6:00 p.m. He welcomed the audience, and announced that there were two items on the agenda:

1. Clarification of Vote of 9/29/16 for Extension of Comprehensive Permit, 94 North Main Street:

Mr. Femia made it clear that the board was not taking another vote. He explained that, in the past, many major actions by the board required a super majority, or 4 out of 5 in favor to pass a request. Regarding the extension of the permit vote, he believed that a super majority was required, and therefore ruled that the request did not pass as the vote was 3 to 2. Mr. Ali consulted with Town Counsel for clarification, and she agreed that regulations state that a super majority is not needed for an extension of the permit; therefore, the 3 “yes” to 2 “no” vote stood and the extension was granted. Mr. Femia said that this change was posted on the Town website, The Banner newspaper was contacted so that they did not print any erroneous information, and the board will send letters explaining this to abutters of the property. This change was also why this special meeting was called.

Mr. Femia continued, giving the history of the request for extension. He explained that, on 9/13/16, the applicant filed for an extension of the Comprehensive Permit, as the permit was due to expire on 10/3/16. However, he did not yet have final approval from MHP as it was still

in the process of being done. Under DHCD regulations, the board had 20 days (or until 10/3/16) to act upon the extension request. However, the board did take action-they had open discussions and voted. Mr. Femia further explained that, if the board took no action, on the 21st day the permit could be extended for one year; in this case, the board voted and approved it for 60 days only.

He continued that he voted to extend as MHP said that final approval would be given by the end of October. He explained that, if the board did not approve, Mr. Ali had the right to appeal to HAC, which usually rules in favor of the developer (he mentioned the fact that the original owner, Mr. Lever, appealed the board's decision to HAC and won), and he asserted that it would have cost the Town money to have to be involved with an appeal. It was suggested by Town Counsel, and the Town Administrator agreed, that the board contact the residents, have a special meeting to explain this, contact The Banner, and post this change on the Town's website. Mr. Femia, to summarize, said that the Comprehensive Permit was extended to 12/3/16, and he apologized to the residents for the error, and explained that the board tries to do the best that they can and they consult with Town Counsel, other Town boards and the bylaws for assistance. He asked for any comments.

George Perry of 85 North Main Street asked if there is anything that can be done about the "rumbling and shaking" from the work being done? He asserted that this happens every morning. It was explained by Mr. Ali that the Dynopack (sp?) machinery, used for compacting the road, made this noise, but the work is done and it will not be used again.

Next, Karen Perron, of 79 North Main Street and Donna Holden of 12 Stillwater Heights spoke. Ms. Holden asked Mr. Femia about the 3 to 2 vote and did the board not consult with Town Counsel before announcing that it passed? She also noted that, at the end of the meeting (on 9/29), it was noticed that he spoke with Mr. Harrison privately and she asked if that violated Open Meeting Law? He replied that it shouldn't have.

Mr. Perry asked, when the extension expires, what if Mr. Ali does not do what he is supposed to do? Mr. Femia replied that they will have to discuss it.

Russell White of 45 Waushacum Street asked about blasting; he said that before, if any blasting was done, he would have water in his basement. He asked what would happen if there is heavy rain, as he is now having dampness in his basement? Mr. Ali replied that the blasting was only done in a 5-foot by 100-foot area, so water in the basement shouldn't have happened. Mr. White asserted to Mr. Ali that he told the residents that there would be no blasting.

Mr. Femia asked if the Chief of the Fire Dept. did an inspection? Mr. Ali responded that the Fire Dept. chief was there, everything is licensed and insured, and the records of this are available.

(Mr. White then interjected that he is waiting for a heavy rain, and will contact Mr. Ali if he has a problem with his basement. Mr. Ali said "okay").

In response to a question from Mr. Rajeshkumar, Mr. Femia replied that there will be no building permit until MHP gives final approval; he will notify the Building Inspector when that comes.

2. Vote on Step Increase and Retroactive Pay for Secretary:

Mr. Rajeshkumar asked if this could be continued to the next meeting, as he did not feel comfortable voting on this now with only three full members present. (Mr. Witkus thought that they should vote on it at this time). Mr. Femia agreed to continue this until the October 27 meeting. (He also mentioned that the Marino/Flagg petition that was to have a public hearing on 10/27 requested to be withdrawn, so at the meeting the board will have to vote to accept the withdrawal without prejudice).

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 6:19 p.m. Mr. Witkus seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____