



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

November 17, 2016

Chair: David Femia

Members Present: David Femia (Chair), Barur Rajeshkumar (Clerk), Christopher Olson, Nate Orciani and Charles Witkus. (John Benson was voted in and sworn in as an Associate Member on 11/16/16-he was only called to sit on the board for the public hearing to take place later this evening).

Others Present: Secretary Toby Goldstein.

Members Absent: Daniel Cronin (Associate Member).

Mr. Femia called the meeting to order at 7:15 p.m. He stated that all members were present. (All full members were present).

Minutes of October 27, 2016 Meeting:

The first order of business was vote to approve the above minutes. The board members reviewed the minutes; Mr. Femia asked if there were any changes suggested, and there were none. Mr. Rajeshkumar made a motion to approve the minutes as submitted. Mr. Orciani seconded. All in favor.

Miscellaneous Mail and Paperwork:

Mr. Femia first announced that John Benson was voted in and sworn in as an Associate Member (on 11/16/16); Mr. Benson was formerly a full member and a Chair of the ZBA. Mr. Femia asked the board if anyone had anything to discuss; they did not. Mr. Femia mentioned a new filing that was received by the ZBA; he informed the board that there may be conservation issues involved, and the public hearing may be continued to the January meeting.

Mr. Femia also signed some paperwork and reviewed some mail received by the board.

With nothing further to discuss or review, Mr. Femia suggested that the board recess until 7:45 pm, the scheduled time for an informal discussion regarding 94 North Main Street; even though

it was not a public hearing, the board agreed that it would be better to wait in the event that the public would still be arriving to listen to the discussion.

Update on 94 North Main Street Final Approval from MHP and Signed and Completed Regulatory Agreement:

(Dean Harrison and Iqbal Ali represented)(Mr. Femia called the meeting to order again at 7:45 p.m.). Mr. Harrison passed out to all board members a package of documents that he put together to be sure they were all in place. Mr. Femia gave a short history leading up to this meeting; he discussed that the Comprehensive Permit for the project was due to expire on 10/3/16. Final Approval by MHP was still not given. On 9/29/16, the board agreed to extend the permit to 12/3/16 to allow time for the Final Approval be done. He continued that MHP then sent a letter to the Town Administrator stating that it would be taken care of by the end of October. Now, the board has Final Approval from MHP and the signed Regulatory Agreement. Mr. Femia said that he noticed that the agreement from Middlesex Bank for their loan was contingent on the Final Approval. (Mr. Femia clarified that the Regulatory Agreement was, in fact, signed, as the copy that the board had prior to the meeting, dated 9/14/16, was not signed; Mr. Harrison responded that the signed copy was in the packet that he just handed out to the board; Mr. Femia stated to the board that all the necessary documents were signed and in order). Mr. Ali mentioned that the road was paved in the development.

In response to a question from Mr. Rajeshkumar, Mr. Ali replied that the bank's approval of funding will be based on Final Approval from MHP, and informed the board that the bank loan closing will be Friday, November 18, at 10:00 a.m. Mr. Harrison reiterated this information, adding that they provided the bank with all the documents. Mr. Femia asked them for a copy of the paperwork from that closing.

Mr. Rajeshkumar then asked Mr. Ali about the fact that the name of the project varied in different paperwork, giving as an example a letter dated 9/14/16 from Middlesex Savings Bank which referred to the project as "Sajda Gardens, formerly the Village at North Main Street." Mr. Ali responded that the differences in naming had been corrected, and the borrower is Sajda Gardens. Mr. Harrison continued that the Final Approval states the name as Sajda Gardens, formerly the Village at North Main Street; the Comprehensive Permit states that Sajda Gardens is the name of the project, and he asserted that all documents list the project as Sajda Gardens.

Mr. Femia asked why the name of the project changed? Mr. Harrison replied that it was part of the Amended Restated Comprehensive Permit.

Mr. Witkus then commented that the housing authority allowed for 80 units, but he thought that it was originally approved for 96 units. Mr. Ali responded that it was originally approved for 96 units, but the Town wanted to reduce the density of the project. Mr. Ali said that it was

a mutual decision to change to 80 units, and added that it took longer to obtain MHP Final Approval because it was originally 96 units and new appraisal had to be done for 80 units instead.

Mr. Olson commented to Mr. Ali that, having obtained Final Approval and the Regulatory Agreement, it seemed as if he was close to asking for a building permit from the Building Inspector. Mr. Ali responded, asserting that he did not have to appear before the ZBA and that it was just a formality to notify them that he obtained Final Approval; he also discussed how hard he had worked on this project. In response to a question from Mr. Olson, Mr. Ali replied that he did not expect the plans to change. Mr. Harrison added that it was a courtesy to give the Final Approval to ZBA, and that the Building Inspector had the Final Approval and they applied for the building permit and expect to obtain it shortly.

Mr. Femia then commented that the ZBA received an email from Wayne Amico, engineer for VHB who had been doing the Peer Review for the project; the email was regarding drainage and Mr. Amico noted that the catch basins sit below the binder pavement that was just installed. Mr. Femia asked if that had been resolved? Mr. Ali responded that, next week, they will cut the pavement down and raise the catch basins. Mr. Femia verified with Mr. Ali that VHB and the Town will then re-inspect them.

Mr. Olson then asked Mr. Ali about erosion controls that Mr. Amico commented about, and Mr. Ali responded that he took care of that.

Mr. Femia then said to Mr. Ali that the Building Inspector had some concerns when they applied for the Building Permit, but the architect said that Mr. Ali did not have to provide everything at once and can obtain a building permit on part of the project. Mr. Ali responded that each separate area of the project, such as the plumbing, will have its own engineer and will have to have approval from the Building Inspector. Mr. Harrison explained that they all have their own permits.

Mr. Ali asked Mr. Femia if this must be done by the end of December? Mr. Femia asked the Building Inspector for comment and any other information that the board would need to know. Bentley Herget, Building Inspector, responded that he gave the board his recommendations, noting that the architects' letter stated that they will give him all information by December 30, and they requested that the ZBA give him authority for a building permit for Building C only, which would include the outer foundation and shell of the building, with nothing done inside yet until the other plans, such as plumbing and electrical, are approved. Mr. Harrison commented that this is a normal process, and in response to a question from Mr. Rajeshkumar, reiterated that all separate permits would be issued for plumbing, electrical, fire, sprinkler, etc. In response to a question from Mr. Femia, Mr. Herget opined that it would take them about a

week or week and a half after receiving the information about all the different areas to go over it all.

Mr. Rajeshkumar then asked about the difference in address of the project on the building Inspector's copy from 94 to 92 North Main Street? Mr. Herget replied that it is actually 92. Mr. Ali explained that the ANR was subdivided, and the parcels changed (Mr. Herget explained, to 94 North Main, and 92 A, B and C North Main Street). Mr. Femia asked Mr. Herget if there would be any problems legally, as since 2004 the address of the project was always referred to as 94 North Main Street. In response to a question from Mr. Femia, Mr. Herget replied that 94 North Main Street is the address of the house in front of the project. Mr. Rajeshkumar then suggested that they might want to ask Town Counsel about the address issue, as the Comprehensive Permit refers to the address as "94 North Main Street." Mr. Femia then explained that, at one time, the house and land behind it was all one property, but the ANR separated the house and land from the project, with the Building Inspector assigning addresses (Mr. Herget noted that Mr. Ali's office is 94 North main Street, and the project is 92 A, B and C North Main Street). Mr. Femia told the board that they could consult with Town Counsel if they want, but the Building Inspector explained it; Mr. Harrison added that the legal description of the property did not change. (The board had no other comments, except Mr. Rajeshkumar wanted to check with Town Counsel).

Mr. Femia continued that, as this was stated on the agenda as an Informal Discussion, the board cannot approve the partial building permit this evening. Mr. Harrison responded that a public vote was not needed now, and they were just confirming that they applied for the building permit and notified the board that the Final Approval and all the State requirements for the Comprehensive Permit have been completed-a public hearing was not required.

(Next, Mr. Femia verified with Mr. Herget that only the foundation and shell of Building C can be done with the partial building permit, and that there will be a report stating that all the different inspectors have seen it). In response to a question from Mr. Rajeshkumar, Mr. Femia responded that Town Counsel commented on the Regulatory Agreement, saying that she can only review Paragraph 29 of the Comprehensive Permit (regarding monitoring agents). Mr. Harrison continued that, if and when MHP is not the monitoring agent any longer, the Town will step in and assume the Regulatory Agreement or the applicant can propose a new monitoring agent, adding that the Regulatory Agreement runs with the land. (Mr. Femia clarified with the board that the ZBA was only acknowledging the documents this evening). Mr. Femia verified with Mr. Herget that the deficiencies noted in the 11/1/16 letter from him to the board had been all addressed. Mr. Femia then surmised that, based on the information from Ali and Mr. Herget that the board could authorize the Building Inspector to issue a Partisl Building Permit for Building C, foundation and shell, for Sajda Gardens. He asked Mr. Herget if the building

permit can be adjusted once the board receives the information about all the areas of work? Mr. Herget replied that it could be adjusted.

From the audience, Bob Holden of 12 Stillwater Heights wanted to comment that a vote was not listed on the agenda. Mr. Olson responded that the developer is not asking the board to vote. Mr. Holden responded that the motion is out of the scope of an informal discussion, which suggests that no decision will be made. Mr. Olson responded that there is also a public hearing on the agenda, and a vote is not mentioned for it but that does not mean that there isn't sufficient notice for the public of a possible vote being taken. He did opine that Mr. Holden's comments were well taken.

Mr. Harrison then asserted that the Comprehensive Permit states that once Final Approval is obtained from MHP, the Building Permit should be issued, and that they are not coming before the board to ask permission. He referred to Condition 14 of the original 2008 permit, which stated that the building permit will not be unreasonably withheld either, and asserted that the board does not need to take an official vote.

Mr. Olson responded that he was not aware of anything that would allow them to withhold the Building Permit; also, the petitioners were not there to ask the board for anything. Mr. Harrison added that they were there as a courtesy, to follow up after the extension given to December 3, 2016. Mr. Ali added that the Building Inspector had the authority to tell them what to do; Mr. Rajeshkumar responded that the ZBA had a responsibility, also. Mr. Ali continued that the Building Inspector had all of their paperwork. With no more comments, Mr. Femia announced, as Chair of the ZBA, that he authorized the Building Inspector to issue a partial building permit for Building C, foundation and shell, for the 92 North Main Street project; he added that they will all return in January at the 1/19/17 meeting and discuss the progress.

Public Hearing, Worcester Behavioral Innovations Realty, LLC, for Special Permit, 0 West Mountain St./100 Century Drive:

Brian Falk and Patrick Healy represented, along with Dr. Richard Kresch of US Healthvest and others from UMass Memorial Health Care and Worcester Behavioral Innovations; a letter was previously sent by the property owners, WCS-100 Century Drive, Inc., which is on file, stating that Worcester Behavioral Innovations Realty, LLC, had permission from them to apply for this permit.

First, Mr. Femia announced that Mr. Rajeshkumar recused himself from the hearing, as he had a conflict regarding his work. He also announced that John Benson returned to the board as an Associate Member, and will sit as a full member in Mr. Rajeshkumar's place. Mr. Femia continued that they will open the public hearing, allow the representatives to present their

information, the board will speak, then the hearing will be open to public comment; he first read aloud the legal notice for the hearing. He then stated for those not present at the October 27 meeting that this public hearing was on the October meeting agenda, but a full board was not going to be present, so the petitioner asked to continue the hearing to the November meeting as the board verified that they would have a full board present.

For the representatives, Mr. Falk first described the location that the petition involved, which is in Worcester Corporate Center on Century Drive in Worcester and West Boylston. He described that the existing office building is located on the Worcester side of the property, whereas most of the accessory parking is located in West Boylston. That configuration will remain the same; the petitioner is looking to change the use from an office building to an in- and out-patient mental health hospital, and the accessory parking in West Boylston will change from parking for an office building to parking for a hospital. He explained that hospital use requires a special permit under the bylaws. (Also, they are seeking a Site Plan Review approval from Planning Board). Mr. Falk said that there are 415 parking spaces currently on site; only 180 are required. They believe that the use meets the special permit standard in the bylaws. He asserted that there would be no impact to the Town of West Boylston due to the location.

Mr. Olson next verified, that Section 6.2 of the bylaws was cited by Mr. Falk; under Schedule of Use (3.2F5) for an animal kennel or hospital, mental health clinic is allowed use with a special permit. Therefore, he asserted that this is allowed use by special permit from this board. Mr. Falk reiterated that it would be "hospital use".

Mr. Benson asked if it would be an in- and out-patient facility? Mr. Falk asked Dr. Kresch to give details about the facility. Richard Kresch of US Healthvest said that the facility will be licensed as an acute psychiatric hospital and the patients would meet the criteria of having a primary psychiatric diagnosis. He said that detox would be a medical ancillary service of a psychiatric hospital, but not drug rehabilitation (in response to questions by the board members). It would be licensed as a short-term stay facility (5 to 8 days), rather than a rehabilitation facility which typically has longer stays. Dr. Kresch explained that the most frequent diagnosis would be affective disorder, and primarily psychiatric diagnoses will be made, although there could be dual diagnoses. In response to a question from Mr. Witkus, Dr. Kresch said that it would be both a non-profit and for-profit facility, and added that they will pay property taxes, divided between West Boylston and Worcester. In response to a question from Mr. Benson, Dr. Kresch said that it would not specifically be for drug treatment, but it would treat as outpatients people who would have been hospital in-patients, and explained that it would not meet the hospital criteria if the only or primary diagnosis would be substance abuse.

Mr. Witkus asked Dr. Kresch about security at the facility. Dr. Kresch responded that there would be security and it would be dealt with in two ways. The primary way would be by

prevention (training of employees in crisis control and de-escalation, with the use of mainly verbal intervention). There would also be in-house security personnel in the event that something unexpected happens. Dr. Kresch added that it will be a double-locked facility, and 99% of the patients would be voluntarily there. Also, the units would be locked and also the perimeter of the patient care areas. He explained that a patient could ask to be discharged, but no one leaves the grounds for their own protection.

In response to a question from Mr. Femia, Mr. Healty explained that they are not proposing a change in the parking spaces, adding that the number currently exceeds that for an office building, and 180 spaces are required for a facility and there would be many extra spaces available. He added that nine accessible spaces are required and they meet ADA requirements; one space is for a van (it will be signed), and the accessible spaces are near the main entrance.

(Mr. Femia asked for public comment next, but there were no questions or comments from the public).

Mr. Olson next asked Mr. Falk about zoning standards, referring to Section 6.2, the project will not be detrimental to the public, therefore in harmony with the bylaws; according to Section E-4, section B, there are 8 standards to consider, but noted that many may not apply as the building is not in West Boylston, and no changes in egress or ingress are proposed. He asked if the amount of traffic may change? Dr. Kresch replied that their proposed use will involve less traffic than the current office building. He explained that the facility will be in 24/7 operation, with employees scattered over work shifts; there may be 50 at one time, so the employee traffic will be low. He added that visiting will be limited, and services such as laboratory and clinic appointments will not take place there, and this will keep down traffic also. He also explained that the outpatient services take place in five-hour days, not in and out appointments, and this will keep down traffic. Also, the offices for the Academic Psychiatry Dept. of UMass, which will be there, will not have a large number of people.

Mr. Benson then asked if there will be an intensive outpatient program, and not have individual counseling being held, for example, one hour at a time? Dr. Kresch replied “yes” to both questions, and explained that the program would be “translational”, with most patients transitioning into the community after the intensive outpatient program after being hospitalized.

Mr. Olson asserted that any dangers would be more building-related than related to the parking lot, and would not be relevant as the building is in Worcester.

Mr. Femia then referred to a Planning Board opinion letter, issued by Mr. Olson (Chair of Planning Board) and emailed to the ZBA prior to the meeting. It stated that compact spaces

were approved in 1991, and the spaces are not changing except that the number of spaces lowered. Mr. Falk responded that the 260 spaces planned exceeds the 180 required.

Mr. Femia then asked, once the permit is approved, when the facility is expected to be fully operational? Dr. Kresch replied that it probably will be fully operational I 18 to 24 months.

With no further questions or comments, Mr. Femia asked for a motion to approve the special permit for access to parking for hospital use at 100 Century Drive. Mr. Olson made a motion to grant the special permit, under Section 3.2F5. Mr. Benson seconded. All in favor. The vote was as follows:

Mr. Benson – “yes”

Mr. Olson – “yes”

Mr. Femia – “yes”

Mr. Orciani – “yes”

Mr. Witkus – “yes”

The motion passed, and the special permit was granted.

Possible Cancellation of December 15, 2016 Meeting:

The board discussed this; several members asked Mr. Femia if there was anything known of to discuss at that meeting; he mentioned a new special permit filing for 264 Prospect Street, but that the applicant was going to the December 5, 2016 Concomm meeting to discuss possible wetland issues so that public hearing might need to be heard on December 15. The board agreed to leave the December 15 meeting on the schedule for now; meanwhile, the Secretary was instructed to contact the petitioner to ask if he would want to have an extension until the January 19, 2017 meeting, and forward to him a form to fill out to request a continuance.

With no further questions or comments, Mr. Rajeshkumar made a motion to adjourn the meeting at 8:52 p.m. Mr. Orciani seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____