



ZONING BOARD OF APPEALS, TOWN OF WEST BOYLSTON
140 WORCESTER STREET
WEST BOYLSTON, MASSACHUSETTS 01583

Notice of Decision for a Repetitive Petition for a Variance

Applicants: JH Energy USA, LLC

Nature of Request: Variance from the minimum lot frontage dimensional requirement in the Industrial District and Repetitive Petition from a Previous Denial of Variance Request

Board Members: Christopher E. Olson, Chair
Barur R. Rajeshkumar
David Femia
Nathaniel Orciani
John Benson

On March 14, 2019, the Petitioner, JH Energy USA, LLC, filed a Petition with the Zoning Board of Appeals, Town of West Boylston, Massachusetts, for a Variance from the Zoning Bylaws, Section 4.2, for the minimum lot frontage dimensional requirement.

Under Section 6.2.F of the Zoning Bylaws, the Zoning Board of Appeals (“the Board”) may grant, upon appeal or petition with respect to particular land or structure, a variance from the provisions of the town’s bylaws.

This Petition was deemed a Repetitive Petition by the Chair of the Board in view of Petitioner’s previous petition filed on January 25, 2019, for which a hearing was held on February 21, 2019 and a Notice of Decision denying the requested Variance was filed with the Town Clerk on March 6, 2019.

Notice was duly given as required by Section 11, Chapter 40A, Mass. General Laws, as well as notices sent to all persons deemed to be affected thereby, as they appear on the most recent tax list, and at which hearing all parties desiring to be heard were given an opportunity to speak.

The Zoning Board of Appeals of the Town of West Boylston, Massachusetts held a public hearing on May 16, 2019 at the West Boylston Town Offices, 140 Worcester Street, West Boylston, MA.

The above noted Board members each attended the hearing and voted on this Petition.

Submissions: The Petitioner submitted along with the Petition, a Request for Findings of Fact (Form A), a certified list of abutters (Form C), a memorandum in support of Variance application, a conceptual site plan, and a Zoning Interpretation Request form.

FACTS AND FINDINGS:

The Zoning Board of Appeals (the Board), after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

1. The Board finds through testimony of the Petitioner (either in written submissions or in person at the hearing) and evidence submitted that JH Energy USA, LLC (1285 Baring Blvd., Sparks, NV) is the owner of certain land situated along the northeasterly portion of Hartwell Street (across from the American Legion Post) in the Town of West Boylston, described in a deed recorded in the Worcester District Registry of Deeds, Book 59745, Page 368, and as shown on the West Boylston Board of Assessors Map No. 170, Lot No. 6, Lot 0 and Map No. 169, Lot No. 26, Lot 1.
2. The Board finds said land is situated in a district classified under the Town of West Boylston Zoning Bylaws as Industrial.
3. The Board finds that presently located on the premises is vacant land.
4. As depicted on the conceptual site plan, the Petitioner seeks a variance to construct two industrial buildings on two independent (yet to be created) lots, depicted on the conceptual site plan as Lot 1 and Lot 2, where Lot 1 is proposed with a lot frontage of 136 feet and Lot 2 is proposed with a lot frontage of 150 feet.
5. The current lot includes approximately 16.4 acres of land.
6. Section 4.2 of the Zoning Bylaws states that the minimum lot frontage in the Industrial District is 150 feet.
7. In accordance with the Zoning Bylaws Section 6.2.F, the Board may grant a variance in this matter if the Board finds that owing to the circumstances relating to the soil conditions, shape or topography of the land but not affecting the general zoning district, a literal enforcement of the provisions of the zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner, and that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning bylaw.
8. Before considering the merits of the Variance request, the Board considered facts and testimony related to whether there has been a specific and material change proposed in this Petition, relative to the previous petition filed by Petitioner on January 25, 2019.

9. The Board finds that a previous petition was filed by the Petitioner on January 25, 2019, for which a hearing was held on February 21, 2019 and a Notice of Decision denying the requested variance was filed with the Town Clerk on March 6, 2019.

10. The Board finds that the instant Petition seeks a variance to the minimum frontage dimension requirement, Section 4.2 of the zoning bylaws. This relief requested is identical to that sought in the previous petition.

11. The Board finds that the instant Petition seeks to create one lot with 150 feet of frontage along Hartwell Street and a second lot with 136 feet of frontage along Hartwell Street. This relief requested is identical to that sought in the previous petition.

12. The Board finds that the principal difference between the two petitions is that the instant petition seeks a variance to create Lot 1 with a reduced frontage (136 feet) whereas in the previous petition the variance sought to create Lot 2 with a reduced frontage (136 feet).

13. The Board finds that the indicated swapping of lot frontages from one proposed lot to the other does not materially change the relief now requested from that previously sought.

14. For the foregoing reasons, the Board finds that the instant petition does NOT describe a “specific and material change” from the previous petition.

15. As a result, the Board did not hear arguments for the requested variance as the instant petition is effectively deemed as re-application from a previously denied petition within two years after the date of final, unfavorable action.

DECISION:

By a vote of one (1) in favor and four (4) opposed, the Board did NOT find that that the Petitioner has described a specific and material change from the previous petition filed on January 25, 2019. Therefore, the Petition for Variance was prohibited as within two years of a previous decision resulting in final, unfavorable action.

Decision of the Town of West Boylston Zoning Board of Appeals Action: The Board, by the Chair's signature below, being present, voted as follows for a motion of finding a specific and material change in the instant petition:

Christopher E. Olson – “yes”

Barur R. Rajeshkumar – “no”

David Femia – “no”

Nathaniel Orciani – “no”

John Benson – “no”

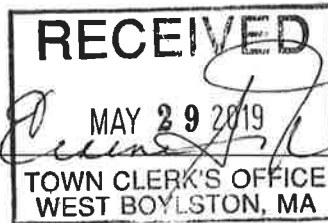


Christopher E. Olson

Chair

Notice is hereby given that any appeal from this Decision shall be made pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty (20) days after the date of the filing of this Decision in the Office of the Town Clerk of West Boylston, MA.

Filed with the Town Clerk on





TOWN OF WEST BOYLSTON

ZONING BOARD OF APPEALS

140 Worcester Street, West Boylston, MA 01583

zba@westboylston-ma.gov

VOTE SHEET

DATE: 5/16/2019

RE: Motion to find a Specific and Material
change in the conditions of plan first presented
to the ZBA and in January 2019

VOTE

YES NO

Christopher E Olson

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Brian R. Geyman

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[Signature]

<input type="checkbox"/>	<input checked="" type="checkbox"/>
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[Signature]
David M Femia

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RECEIVED

MAY 17 2019

TOWN CLERK'S OFFICE
WEST BOYLSTON, MA