



ZONING BOARD OF APPEALS, TOWN OF WEST BOYLSTON

140 WORCESTER STREET
WEST BOYLSTON, MASSACHUSETTS 01583

Notice of Decision Denying an Administrative Appeal

Applicant: Joseph Evangelista and Gary DeWolfe (Pinecroft Development Inc.)

Address: 241 Woodland Street

Date Petition Filed with the Town Clerk: June 15, 2020

Nature of Request: Petition for Administrative Appeal regarding the Denial of Building Permit

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

On June 18, 2020, the Petitioners, Joseph Evangelista and Gary DeWolfe, filed a Petition with the Zoning Board of Appeals, Town of West Boylston, Massachusetts, for an Administrative Appeal under the Zoning Bylaws, Section 6.2.D. Specifically, the Petitioner is appealing the denial of a building permit by the town's Building Inspector, George Tignor.

Under Section 6.2.D of the Zoning Bylaws, the Zoning Board of Appeals ("the Board") is competent to hear and decide upon appeals "...by any person aggrieved by reason of his inability to obtain a permit from any administrative officer...under the provisions of Chapter 40A of the Massachusetts General Laws."

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 public hearings on August 20th, September 17th, and October 15th, 2020 via remote participation over the internet due to the statewide covid-19 state of emergency and orders from the Governor related to the suspension of certain provisions of the open meeting law.

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

Submissions: The Petitioners submitted along with the Petition, an Abutters and Planning Boards form (Form C), Request for an Administrative Appeal (Form G), a certified list of abutters, a Zoning Interpretation Request Form completed by George Tignor (dated June 2, 2020), a memorandum of facts and law from the Petitioner with exhibits 1-4 (dated June 8, 2020), a further memorandum (dated September 22, 2020), and documents related to a 2018 variance request at 241 Woodland Street. Petitioners also submitted a letter, dated September 24, 2020, voluntarily extending the deadline for final action in this matter to October 25, 2020.

FACTS AND FINDINGS:

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

1. The Board finds through testimony of the Petitioners (either directly from Joseph Evangelista or through his attorney Mr. George Kiritsy) and evidence submitted that Pinecroft Development, Inc. is the owner of certain land situated on the westerly side of Woodland Street in the Town of West Boylston (with an address of 241 Woodland Street), described in a Deed recorded with the Worcester District Registry of Deeds, Book 60301, Page 337 and with the West Boylston Board of Assessors Map number 174, Lot number 045. Further, Gary DeWolfe and Joseph Evangelista are the President and Treasurer, respectively, of Pinecroft Development, Inc.
2. The Board finds said lot is situated as being split into two zoning districts classified under the Town of West Boylston Zoning Bylaws as Business and Single Residence. Further, as evidenced by the town's zoning bylaws, including Section 3.2, the Single Residence district is the most restrictive district in the town.
3. The Board finds that presently located on the lot is vacant land.
4. The Board finds through testimony and evidence that the Petitioners are appealing the denial of a building permit by the Building Inspector for the construction of a four unit multi-family residential structure. The Petitioners propose to build the structure within the Business district and within an extended thirty (30) foot area into the Single Residence district, pursuant to Section 2.4 of the town's zoning bylaws.

Section 2.4 is drawn towards lots in two districts and states that "[w]here a district boundary line divided a lot in a single or joint ownership at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty feet into the more restricted portion, provided the lot has a frontage on a street in the less restricted district."

The Board notes that, in the instant case, the less restricted district is the Business district and the more restricted district is the Single Residence district.

The Board also notes that, at the hearing on August 20th, the Petitioners acknowledged that the lot was held in single or joint ownership at the time the district boundary line was adopted. Further, it is undisputed that the lot has frontage on a street in the less restricted district.

Further, the Board notes that multi-family use (four units or less) is allowed by right in the Business district and is prohibited in the Single Residence district.

5. The Board finds through testimony and evidence that the total lot size is about 46,962 square feet (about 1.08 acres). See Exhibits 1 and 2 of the memorandum dated June 8, 2020. Further, as evidenced by Exhibit 1, the front portion of the lot directly abutting Woodland Street is in the Business district while the rear portion of the lot is in the Single Residence district. The district boundary line divides the lot along a diagonal (relative to the street) across the lot. In addition, Exhibit 1 shows the thirty (30) foot zoning line which represents thirty feet into the more restricted (Single Residence) portion of the lot, as described in Section 2.4. This area may be referred to herein as the “thirty foot buffer area.” As noted in the Petitioners’ memorandum dated September 22, 2020, the portion of the lot within the Business district and as extended by the thirty foot buffer area is approximately 23,000 square feet.

6. The Building Inspector’s decision to deny the building permit was related to the proposed plan to include a portion of the multi-family structure within the more restricted (Single Residence) portion of the lot. According to the Building Inspector’s interpretation, “Building located on split-lot of Business and Single Resident zones. Part of building will be in the Single Residence zone. Where use of the portion of the lot in the more restrictive district is for an active purpose, the regulations of that district may be invoked to preclude or condition the use.”

7. During the hearing and notwithstanding the reasoning of the Building Inspector’s decision, the Board raised the issue of an additional regulation related to multi-family dwellings. Section 4.3.A of the town’s zoning bylaws states as follows:

A. Multi-family Dwellings

- 1) For multiple dwelling use, the minimum lot area shall be 10,000 square feet for each dwelling unit on lots where sewer service is available and permitted. For multiple dwelling use on lots where sewer service is not available and permitted, the minimum lot area shall be 20,000 square feet for each dwelling unit.

More specifically, the Board recognized that the proposed multi-family use is allowed in the less restrictive district (Business) but is prohibited in the more restrictive district (Single Residence) and sought input from the Petitioners regarding whether the entire lot area is available or whether only the portion of the lot area in the Business district and extended by the thirty foot buffer area is available for purposes of Section 4.3.A.

8. The Board finds through testimony and evidence (provided by the Board of Health) that sewer service is available and permitted on the lot. Thus, with respect to Section 4.3.A, the minimum lot area shall be 10,000 square feet for each dwelling unit. As a result, if the entire lot area (46,962 square feet) is available for purposes of Section 4.3.A, then the minimum lot area for four units (40,000 square feet) is satisfied. On the other hand, if only the portion of the lot area in the Business district and extended by the thirty foot buffer area (approximately 23,000 square feet in total) is available for purposes of Section 4.3.A, then the minimum lot area for four units (40,000 square feet) is not satisfied.

9. The Petitioners provided the Board with both written and verbal summaries of what they considered to be the most relevant case law, arguing that the entire lot area should be available for purposes of Section 4.3.A. Among several cases, *Tofias v. Butler* (26 Mass. App. Ct. 89 (1988)) was deemed particularly relevant.

10. After review of the cases highlighted by the Petitioners and *Tofias* in particular, the Board noted that the underlying zoning issue in *Tofias* was related to the dimensional requirement of lot coverage on a split lot (containing a portion zoned limited commercial and a portion zoned residential) and, more specifically, where the footprint of structures on the lot was regulated. Further, the Court in *Tofias* acknowledged that the lot coverage restriction (20 percent of ground area) was the same in both zoning districts at issue. Thus, *Tofias* describes a factual scenario with a split lot where the underlying zoning issue (*i.e.*, lot coverage) is uniform across both zoning districts.

11. The Board recognizes that in the instant case, unlike *Tofias*, the underlying zoning issue is multi-family use, a use which is treated non-uniformly across the two zoning districts at issue. More succinctly, multi-family use is allowed in the Business district but is prohibited in the Single Residence district.

12. The Board reads Section 4.3.A of the town's zoning bylaws as presupposing that multi-family use is allowed where applicable. As a result, Section 4.3.A cannot, in the view of the Board, be used to expand multi-family use into areas where it is expressly prohibited, including on the instant lot in two zoning districts. Conversely, if the Board were to allow four units to be built upon the approximately 23,000 total square feet of lot area in the Business district and extended by the thirty foot buffer area, it would effectively reduce the "10,000 square feet for each dwelling unit" regulation to less than 6,000 square feet for each dwelling unit.

13. Further, the Board notes that Section 2.4 of the town's bylaws states that "...***the regulations*** for the less restricted portion of such lot shall extend not more than thirty feet into the more restricted portion..." (emphasis added). "[T]he regulations" as stated in the bylaw, in the view of the Board, refer to both use regulations and dimensional regulations. Thus, both the use and dimensional regulations shall extend ***not more than thirty feet*** into the more restricted portion of the lot. To find otherwise would be to extend the regulations for the less restricted portion more than thirty feet into the more restricted portion of the lot. Such a finding would be contrary to the express language of Section 2.4.

14. The Board finds that the lot does not contain sufficient area in the business district and the thirty foot buffer area to justify multi-family use for four units.

15. Accordingly, the Board sustains the denial of the requested building permit for a four unit multi-family building as supported by the Board's findings described herein.

DECISION:

The Board finds and so votes, by a vote of zero (0) in favor and five (5) opposed to granting the building permit for a four unit multi-family building, that in accordance with Section 6.2.D the Petitioners administrative appeal is denied.

Decision of the Town of West Boylston Zoning Board of Appeals Action: The Board, by the Chair's signature below, being present remotely, voted as follows regarding the above-referenced Petition:

Christopher E. Olson – “no”
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

