



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, May 31, 2018/7:00 p.m./Selectmen's Meeting Room (NOTE: REGULARLY SCHEDULED MAY 17 MEETING WAS CANCELLED, DUE TO MAY 31 SPECIAL MEETING)
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Members Present	David Femia (Chair), Christopher Olson (Vice-Chair), Barur Rajeshkumar (Clerk), Nathaniel Orciani, Charles Witkus (arrived late), and Toby Goldstein (Secretary)
Members NOT Present	Andrew Feland (Associate Member), John Benson (Associate Member), and Daniel Cronin (Associate Member)
Invited Guests	Bentley Herget, Building Inspector; Iqbal Ali, Developer, 92 North Main Street; Paul Haverly (Mr. Ali's Attorney)

Welcome – Call to Order Time: 7:05 p.m. (by Mr. Femia)

Approval of Previous Minutes Not done at this meeting.

Motion Originator N/A

Motion Seconded N/A

Treasurer – Financial Report Mr. Femia reviewed the accounts and balances on statement dated 4/30/18 (latest one); no discussion with the board took place.

Motion to Accept N/A

Seconded N/A

Mr. Femia called the meeting to order at 7:06 p.m. He announced the names of all present (Mr. Witkus arrived at 7:09 pm).

Discussion of Anything and Everything Pertaining to 92 North Main Street, Including Proposed Changes:

(Mr. Femia announced that this was the only item on the agenda). Mr. Femia informed the board that he received a letter from Paul Haverty, Attorney for Iqbal Ali, developer for 92 North Main Street. The letter detailed changes proposed to Building C; the letter mentioned 14 one-bedroom units in Bldg. C, with 9 of them having a den, for which a building permit was issued. Mr. Femia asserted that he never heard anything about dens in any of the one-bedroom units. Mr. Haverty next introduced himself, and stated that they submitted a request for modification of the previous Comprehensive Permits. He explained that the applicant is allowed to request modifications to the Comprehensive Permit, and it is up to the ZBA to determine if the modifications are substantial or not at a public hearing. He added that the applicant has a right to appeal the decision of the ZBA to the Housing Appeals Committee (HAC) if the board considers the requests to be substantial, or hold off on that pending the results of a public hearing. Mr. Haverty continued that the regulations (in Chapter 760 CMR) cross reference another section, which lists what are normally substantial and insubstantial changes, and noted that a change in total number of bedrooms less than 10% is considered insubstantial (in this case, with 154 bedrooms originally, a change of greater than 15 bedrooms, added or subtracted, is considered insubstantial). He mentioned that there are other smaller items that the board had mentioned, and he said that he was going to explain some 40B facts. He asserted that the preliminary plans submitted with the petition are not necessarily the final design plans, which the applicant brings when the project is approved, so that he can obtain a building permit. He said that occasionally, as additional information is being prepared, there are small changes to what was presented that will be on the final plans. Sometimes towns will leave it up to the discretion of the Building Inspector to decide if these changes are significant. He noted a yoga room and fitness center in Building A, a dog park, gazebo and clubhouse, and asserted that he could argue that they did not need additional approval for these, and he said that the Building Inspector did approve them, but thought that they should do it all at one time.

In response to a question from Mr. Rajeshkumar, Mr. Haverty replied that they are requesting to convert 9 one-bedroom units to two-bedroom units; he asserted that there is more usable space within the units, and the dens could be considered second bedrooms. Mr. Haverty noted that a concern could be if they would exceed the septic capacity but that would not be the case in this situation. In response to another question from Mr. Rajeshkumar regarding number of bedroom units, Mr. Ali replied that there are 14 one-bedroom, 58 two-bedroom, and 8 three-bedroom, with a total of 80 units. Mr. Ali reiterated that they are asking for the 9 one-bedroom units with dens to be converted to two-bedroom units. In response to Mr. Rajeshkumar, Mr. Ali stated that, of the 5 one-bedrooms that will remain as such, 4 will be affordable, and 1 market rate. He asserted that the reason for the one-bedroom units with dens was that there was a lot of wasted space in Building C due to changes in the design; it was made into a 3-floor rather than a 4-floor building, but the footprint remained the same, and the staircase to the fourth floor was not needed so they moved it. Mr. Haverty added the assertion that there was inefficiency in the design of the preliminary plan. In response to a question from Mr. Orciani, Mr. Haverty replied that they did not notice it before because it was a preliminary plan, without the level of detail of a final plan (Mr. Haverty and Mr. Ali looked at the plan with the board and showed them the changes made to the original design). In response to Mr. Rajeshkumar, Mr. Haverty replied that only the nine one-bedroom units have a den.

Mr. Femia spoke next. He noted that the plans were approved by the Building Inspector, and during construction, changes in design were needed. But, he asked, when the plans were approved and changes were made, why not were they brought to the attention of the ZBA and Building Inspector at the time, such as the movement of the stairs? Mr. Rajeshkumar continued, asserting that Mr. Ali never mentioned the dens to the board previously, and now he wants to convert them to two-bedroom units.

Mr. Haverty responded that 40B construction is different because of the preliminary plan to final plan process. He agreed that it was better to come before the board, so he advised his client to make a formal request so that everyone knew what was happening.

Mr. Femia then noted that the first change to plans was that natural gas was supposed to be used, but it was not (Mr. Ali decided to use electric). Then, electric heat pumps were installed, but the board was not told (a board member noticed them), and Mr. Femia asserted that they could have been put in better locations as residents cannot use their decks when the pumps are on. Also, the Building Inspector noticed solar panels on Building A, and they were not mentioned in the building permit or on the plan. Mr. Femia opined that the units are beautiful in appearance, but asserted that the board and Building Inspector should be notified when any changes take place.

In response to a question from Mr. Rajeshkumar, Mr. Ali replied that he did tell the Electric Dept. about the solar panels, they had no recommendations, and in 2019 they will put a meter there, and reiterated that the wattage produced powers the clubhouse and gym. Regarding the use of electric rather than gas, Mr. Ali said that he explained to the Electric Dept. that propane was going to be too expensive.

Mr. Femia then mentioned again the heat pumps, and that the board did not find out until after they were installed. Mr. Haverty replied that he thought that the change of heating did not have to come before the board, and asserted that there was a different nature to this oversight according to 40B instead of a conventional project. He opined that the developer may not have realized that he was supposed to come before the board to notify them, and he acknowledged that he understood the board's frustration, but asserted that Mr. Femia was aware of Mr. Haverty's involvement with 40B and understanding of how these projects work, and that the applicant will give the board any notice that is required of any changes to take place. Mr. Ali added that there was no footprint change to Building C even though the building configuration changed.

Mr. Rajeshkumar then asked, if the board approves the changes, will the combination of bedrooms be different than what is dictated in the Comprehensive Permit? Mr. Haverty replied that the change will be less than 10%, which is not considered substantial, and he did not believe that there would be any impacts, either, such as on parking. In response to a question from Mr. Rajeshkumar about parking spaces, Mr. Ali replied that there are 1 ½ parking spaces per unit, explaining that the parking was designed originally for 96 units; there will be 172 spaces plus handicapped spaces. Mr. Rajeshkumar questioned if there would be enough spaces for the additional two bedroom units that they want? Mr. Ali asserted that there would be more than enough spaces.

In response to a question from Mr. Femia, Mr. Haverty replied that there were not to be any affordable units in the nine one-bedrooms with den that they are looking to convert. Mr. Ali added that four one-bedrooms were approved for affordable, and that all the three-bedrooms are in Building A. After discussing the total number of bedrooms that there will be if the changes are granted (5 one-bedroom, 67 two-bedroom, and 8 three-bedroom), Mr. Haverty read the regulations, which state that less than 10% change in the overall bedroom count does not constitute a substantial change. He clarified for Mr. Femia that the five one-bedroom units would have no den. Mr. Femia asserted that there would be 163 bedrooms in total, and that a substantial change would be at least 16 or 17 bedrooms. Mr. Olson clarified that the nine units to be converted were all rented at market rate. Mr. Haverty commented that it is up to MHP if they need to have more affordable units; the applicant will have to go back to the subsidizing agency for final approval of the changes, and if the distribution of affordable and market units is not acceptable, the applicant will have to go back to the board, but noted that MHP will only look into what is in their purview, not what is in the board's purview.

Mr. Rajeshkumar next addressed the signage for the development; he asserted that there were complaints about the brightness. Mr. Ali replied that he could give the board the number of lumens, and that can be reduced; but he opined that people might miss it on Route 140 without the brightness, and noted that professional people made the sign and they would have known what was proper. He said that he can recheck it.

Mr. Haverty asked the board if there were any other issues. Mr. Femia asserted that the sign is not authorized in single residence districts, but the sign is smaller than what was approved on the plan, and noted that other businesses in the area have signs. Mr. Femia explained that the ZBA, regarding 40B projects, can approve ANR plans, so they approved the sign. Mr. Rajeshkumar responded, reading the Zoning Bylaw 5.6, 9B (Signs and Billboards), which states that the sign can be illuminated by an external source directed to the sign, and it must be at low levels of intensity, and not in the public ways; he suggested that it can be toned down if people complain. Mr. Ali responded that he can work it out with the Electric Dept. and the Building Inspector; he opined that it was not that bright. Mr. Haverty added that they can work with it. Mr. Orciani suggested that they could perhaps use a timer to dim the light later in the day. Mr. Rajeshkumar commented that the development is not a business. Mr. Haverty asserted that it is a safety concern for people to see easily.

Mr. Femia asked the Building Inspector (Bentley Herget) if it is possible to dim down the light with timers? Mr. Herget replied that he did not know, but stated that the Town bylaws do not allow the lighting between 12 midnight and 6 a.m. unless the establishment is open. Mr. Femia and Mr. Rajeshkumar commented that this is not a business. Mr. Haverty commented that residents can go in and out of the apartments. Mr. Femia recommended that they work with the Building Inspector and Electric Dept.; he opined that they need an expert to help them decide what time is best to dim the light and thought that the best time to see how bright it is would be at night when most people are in bed. Mr. Haverty thought that perhaps they could use a bulb with lower wattage. Mr. Rajeshkumar commented that it is a busy road, a bright sign, and an apartment complex, and opined that they should tone it down all the time. Mr. Haverty agreed to work with the Building Inspector.

Mr. Femia addressed Mr. Haverty, stating that VHB's assessment showed that the applicant had not completed all items on the list of things to be done, and reminded him to contact the Building Inspector to inspect it after all items are completed. He noted one item, regarding the stockade fence separating the house from the road; Mr. Femia noted how it is located on the approved plan as one continuous fence, but there are two openings in it, one for the driveway and one for the walkway, and he said that it must either be completed so that it is continuous, or a gate installed. Mr. Ali responded that the reason the fence was left open was that, on the original site plan, a garage was to be there as a maintenance garage for equipment. He said that eventually a garage will be there. He asserted that there will be good access for people leaving also; but, if the board wants, he will complete the fence. Mr. Haverty said that they will submit a plan with a gate. Mr. Ali asked about the walkway also? Mr. Femia said "yes" to that also. Mr. Ali replied to Mr. Femia that the list was complete other than the gate and the plantings; he asserted that there was no room now. He mentioned that they put in an irrigation system, and hopefully grass will grow. Mr. Herget commented that the elevations are such, that the areas on the plan showing plantings are steep. Mr. Ali added that the plantings for screening purposes were done; the other plantings are just for the front of the buildings.

(Mr. Femia then addressed the abutters in the audience and asked for any questions). Mr. (no first name was on the sign-in sheet) Holden of 12 Stillwater Heights commented that the trees are not tall enough yet. Mr. Femia asked Mr. Ali about the chain link fence; Mr. Ali said that will be done. He reiterated that the play areas are done. Mr. Rajeshkumar then asked Mr. Femia to read aloud the list of items to be completed, and Mr. Femia did so, noting what was and was not done; Mr. Femia asked Mr. Herget to go out and verify this, then send a note to the ZBA).

Mr. Femia then asked Mr. Haverty if there is normally a final "as-built" plan for 40B projects? Mr. Haverty replied that he will review the Comprehensive Permit to see if it is required. Mr. Rajeshkumar asserted that there is one. Mr. Femia asked Mr. Haverty to do a final one and submit it to VHB to see if everything is there. (Mr. Femia then had a brief conversation with Mr. Haverty about 40B projects). (Mr. Rajeshkumar then asked Mr.

Femia about a bond from the developer which was previously discussed; Mr. Femia told Mr. Rajeshkumar that the board voted against a bond as Mr. Ali was completing the list of deficiencies – Mr. Rajeshkumar was not at that meeting – and only instructed that, when the work was completed, that it just needed approval. Mr. Haverty commented that the Town is protected because of occupancy permits). (Mr. Rajeshkumar then reiterated the two issues to be resolved, the lighting and the fence gate; Mr. Haverty reiterated that they need the board to vote that the proposed changes are insubstantial-Mr. Femia responded that only a simple majority is needed).

From the audience, John Owanisian of 8 Stillwater Heights spoke next. He commented that the original issue with this development was with density, and he said that even if this is technically an insubstantial change, he asserted that this is another move to make the population denser, with a 6% increase in bedrooms. He asked what would prevent the applicant, in the future, from converting two-bedroom units to three-bedrooms? In response, Mr. Haverty said that 15 additional bedrooms would be less than a 10% change, and that six or more would have to be added; the chances of this being done are small, as the construction is already done. Mr. Herget commented, that even though Mr. Haverty said that plans do change, he (Mr. Herget) approved and stamped plans and Mr. Ali did not use those plans; Mr. Herget asserted that no dens were shown on his plans. He said that he needs a complete, revised set of plans for himself and the Fire Dept. chief at the very least; it will be up to the board to decide how to vote.

Mr. Rajeshkumar then opined that he thought the dens were created with the plan in mind to make two-bedroom units; he commented that this change will increase density, which will affect things such as the schools and traffic, not just the number of rooms. Mr. Haverty responded that the changes are incremental, not substantial.

In response to questions from Mr. Femia regarding the units, Mr. Ali responded that 100% of the market rate units were rented, one affordable unit is left to be rented, with five applications to be approved, 19 of 20 affordable units are rented, and only one of the local preference units (14) has been rented.

Mr. Rajeshkumar added, that when the Comprehensive Permit was approved, there were 14 one-bedroom units for a reason - so that people could afford it. Mr. Ali responded that there is only about a \$50.00 to \$75.00 per month difference between the one-bedrooms and two-bedrooms. Mr. Haverty added that the subsidizing agency will review this concerning affordability. Mr. Ali continued that there is not much demand for two-bedrooms, and opined that people prefer one-bedroom as the rooms are bigger.

With no further questions or comments, Mr. Olson made a motion to determine that the request to convert nine one-bedroom units to nine two-bedroom units in Building C is an insubstantial change; Mr. Rajeshkumar seconded. All in favor. The vote was as follows:

Mr. Olson – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “no”

Mr. Orciani – “no”

Mr. Witkus – “no”

The board voted to consider this a substantial change; Mr. Haverty said to the board that he and the applicant would now appeal to Housing Appeals Court. (There were no further comments from the board).

Other Business:

Miscellaneous Mail and Paperwork Needing Signatures:

There was none. Mr. Femia looked over the latest Financial Report from the Accounting Office (dated 4/30/18) but there was no discussion of it.

Future Agenda Items/ZBA Reports:

None so far.

Next Scheduled ZBA Meeting – Thursday, June 21, 2018, 7:00 p.m.

Any Items Not Received Prior to 48 Hours Before Meeting:

There were none.

Regarding Dr. Tashjian:

Mr. Herget notified the court that no fines had been paid and no appeals made by Dr. Tashjian; Mr. Herget said that it will be in the court's hands. Mr. Femia asked him to let the board know what happens.

Regarding Sciusso, 24 Sterling Place:

The Building Inspector explained that he believed that Mr. Sciusso had tried to convert his three-family house to a four-family house, and he made many internal changes without any permits. Mr. Herget forwarded a copy to the ZBA of a letter to Mr. Sciusso ordering him to cease and desist from making internal changes to his house without permits.

Reminder of Executive Sessions With Board of Selectmen and ZBA By Itself, on Wed., June 6, at 5:30 p.m.

NEXT MEETING Thursday, June 21, 2018, 7:00 p.m. (Executive Sessions with Board of Selectmen and ZBA By Itself on Wed., June 6, 2018, 5:30 p.m.)

MOTION TO ADJOURN

Motion Originator Mr. Rajeshkumar

Motion Seconded Mr. Olson

Time of Adjournment 8:16 p.m.

Signatures


Barur Rajeshkumar

Submitted by: Toby S. Goldstein

Date Submitted:

7/19/18

