



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

# [Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, January 17, 2019/7:00 p.m./Selectmen's Meeting Room – <u>OPEN SESSION</u>
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<b>Members Present</b>	Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia, Nathaniel Orciani, Charles Witkus, Andrew Feland (Associate Member), Mark Wyatt (Associate Member) and Secretary Toby Goldstein
<b>Members NOT Present</b>	John Benson (Associate Member)
<b>Invited Guests</b>	George Tignor (Building Inspector); Carolyn Murray, Town Counsel (Executive Session only, by phone)

Welcome – Call to Order Time: 7:04 p.m. (by Mr. Olson)

Approval of Previous Minutes 12/6/18

**Motion Originator** Mr. Femia (approved as amended)

**Motion Seconded**    **Mr. Orciani**

## **Treasurer – Financial Report**

**Motion to Accept N/A**

**Seconded** N/A

At 7:04 pm, Mr. Olson called the meeting to order; he announced that all five of the Full Members were present, and that, before the public hearing scheduled for 7:15, the board would discuss a couple of agenda items.

## **Minutes of December 6, 2018:**

After review of the draft minutes by the board, Mr. Olson noted some changes that needed to be made. Mr. Femia then made a motion to accept the minutes as amended. Mr. Orciani seconded. All in favor.

**Informal discussion with George Tignor, Building Inspector:**

(Mr. Tignor had sent an email to the ZBA, requesting to meet with them informally to introduce himself and discuss goals; Mr. Olson thanked him for coming this evening). Mr. Tignor explained that this would be an opportunity for the board to ask him any questions as, at the last meeting, he did not have a chance to introduce himself. He said that he was interested in being sure that things would be done according to the bylaws, and said that he would do his best to interpret them. He said that he would come to the ZBA if he has any questions, and explained that he works for the Town and will try to do the best for them. Mr. Olson responded, from his experiences on Planning Board and ZBA that there will always be situations where the board and the Building Inspector have differing opinions, and that the willingness to understand and apply the bylaws properly was important. Mr. Tignor added that, even if there is disagreement, what's important is finding out what is right as well as what is wrong. Mr. Rajeshkumar then thanked Mr. Tignor for attending the meeting, and he explained that some things go through the Planning Board and other through the ZBA, and asked Mr. Tignor to communicate with the board before giving occupancy permits if he has any questions regarding special permits. Mr. Tignor responded that he had reached out before and will continue to do so, and will do his best to investigate a situation for any questions. Mr. Femia then thanked Mr. Tignor for his input, and asserted that the Building Inspector is the "first line of defense" and that noted that he gives a report to the ZBA before a petition is filed. He suggested giving the Building Dept. a copy of petitions filed for him to review, and that the ZBA would send a copy of decisions from other boards concerning the petitions to Mr. Tignor also. Mr. Rajeshkumar mentioned to Mr. Tignor that, when he has the time, there were many pending projects and violations in town to address; Mr. Tignor replied that he had a list and will look at it when he has the time and said that he was interested in a few of them. Mr. Femia then asked Mr. Olson about further meetings of Permitting Chairs; Mr. Olson replied that there was a meeting last month, and there will be more.

**Public Hearing, John and Sally Smalanskas, for Special Permit according to Section 1.4.B, and/or Section 3.2 of the Zoning Bylaws, to erect a multi-use building with (2) business units and (2) apartments at 249 West Boylston Street, West Boylston, MA:**

(John Smalanskas, Sally Smalanskas, Joseph Graham and Robert O'Neil represented). Mr. Olson explained to the applicants the procedure for the public hearing; they would have the opportunity to present their proposal, with the board asking questions during the explanation, then the public could ask questions/give comments. Mr. Orciani then read aloud the notice of the public hearing.

Mr. Smalanskas introduced himself, his wife and his engineers. Mr. O'Neil explained that he prepared the plan that was before the board this evening with Mr. Graham. He explained that they filed with the board because the property is an existing nonconforming lot according to zoning bylaw, with previous residential use, and Mr. Smalanskas wants to provide a multiuse building with professional office space and residential space. He explained that they had some confusion with the bylaw involved under which they should file, mentioning that the Building Inspectors had changed, and Section 3.2, which is what they originally indicated on the petition dealt with criteria for buildable lot and setback requirements, but agreed that 1.4B was more applicable, as it is for the extension of an already existing nonconforming lot (Mr. Olson had suggested this to them after they filed the petition under Section 3.2).. In response to a question from Mr. Olson, Mr. O'Neil replied that the lot size was the nonconformity to which they referred; the size of the lot is 0.4 acres, with just under 150 feet of frontage, whereas, in this business zone, the requirement is one acre of square footage and 150 feet of frontage. He continued that they are proposing a 40' x 100' building, multiuse, with associated parking; the building would meet the setback requirements, but the property is deficient in frontage and area, and asserted that there was no extension of nonconformity. Mr. Graham continued that he basically handled the planning of the drainage, parking layout, building location, and stormwater regulations to meet the site criteria and requirements of the

building use. They are proposing a 4,000 square-foot building, with 19 parking spots, two handicapped spaces, a dumpster area, and snow storage in the rear, along with a privacy fence to screen the lot from adjacent parcels. He added that they submitted a full site plan because they intend to obtain site plan approval from Planning Board and that they don't see any changes between this evening and Site Plan Review. He continued that there is no existing drainage infrastructure on West Boylston Street, and noted that MA DOT owns that property (Route 12); for that reason, he said that all captured runoff will recharge on the site, and there will be an underground filtration system, and that there should be no runoff offsite. Mr. O'Neil added that there is existing sewer lateral to the property, which was disconnected from the previous structure and they plan to use that. Also, he said that Mr. Smalanskas plans to do plantings, and will discuss that with Planning Board if they receive the special permit from ZBA. Mr. Olson then verified with Mr. O'Neil that the proposal is to build two residences and two business units. Mr. Smalanskas continued, that he hired the engineers to determine the maximum size building to accommodate the two residential and two business units. He said that the building will not be larger than what is there now, and might even be smaller; he explained that there would be two professional businesses, such as insurance companies or law offices, and upstairs would be two apartments. Mr. Rajeshkumar asked him if a variance was granted on the property once before? Mr. Smalanskas responded that he had a copy of it in the application packet (granted March 6, 1984), and explained that, at one time, there was one acre in back with two buildings on it (he owned the frontage); however, the Town informed the owners that they could not do that, so the remedy was to have two separate  $\frac{1}{2}$ -acre parcels, with one building on each. So, the Town created double nonconforming lots. Mr. Rajeshkumar then reiterated that situation, noted that Planning Board would not divide the property in two, so the situation went before the ZBA to grant a variance for nonconforming lots, each with a residence. Mr. Smalanskas asserted that the lot in front that he owned was always in a business zone. Mr. Olson noted that, at the time, the other lots were used as residential. In response to a question from Mr. Rajeshkumar, Mr. Femia replied that the building was demolished in 2014. Mr. Rajeshkumar asked if the variance was still valid, if it could be residential and nonconforming, or did it expire? Mr. Olson replied that he did not see conditions that limited the use of the lot; he saw that they allowed the larger one-acre lot be split, which would make the lot in question at 249 nonconforming, with less frontage, and since the variance was granted in 1984 it continues to be nonconforming now. Mr. Smalanskas agreed with this and added that the property went through an ANR process after the variance was granted to divide it into the two lots. Mr. Rajeshkumar read it, and noted that on the front lot was a single-family dwelling, but it was a business zone by default. Mr. Olson agreed that it was a business zone. Mr. Rajeshkumar opined that the request was not clear. Mr. Olson explained that there was an existing nonconforming lot, but it was legally created in 1984, and the current nonconforming nature has not changed, and there is a variance for that. He continued, that they are proposing now a building and parking, and they agree to go through the Site Plan process, so they must comply with all current zoning; Section 1.4B requires that step be gone through. Mr. O'Neil opined that alteration of use within a nonconforming lot requires a special permit, and believed that the proposed project would be more harmonious to business use and added that there will be some residential use also.

Mr. Olson then opined that West Boylston Street has lots of businesses, and wondered how this project would fit in, such as regarding additional traffic in an already busy area? (He asked for any thoughts). Mr. O'Neil responded that there are proposed 19 parking spaces, and based on the area, it will generate parking, but opined that there would probably not be that many cars or traffic to and from there. In response to a question from Mr. Orciani, Mr. Smalanskas replied that there would not be greater than two bedrooms per apartment, and he was leaning towards only one. In response to a question from Mr. Witkus, Mr. O'Neil replied that the parking would be in the back, to comply with parking in a business zone, and Mr. Witkus reiterated that Planning Board would have to approve the project.

Mr. Olson then opined that it looked as though there would not be much permeable, green space left over after the building and parking are done. Mr. Graham responded that they want to increase plantings along

the front, as there are trees along West Boylston Street already, and he explained that in the impervious area, drainage structures would collect the water and infiltrate it under the parking lot to keep recharge of the ground water on the site; the water would be treated, recharged, and maintained on site. (Mr. O'Neil added that this also includes water from the roof). Mr. Graham continued, as there is no surface drainage along West Boylston Street, they will be providing it, and they did not believe that it would impact anything outside of their area, and that they might even receive runoff.

Mr. Olson then explained that the special permit is under Section 1.4B of the bylaws, and that Section 3.2 was originally cited in the application, but the property is in the business district, and there will be professional offices for business use. Mr. Rajeshkumar asked if they could impose conditions? Mr. Olson asked Mr. Smalanskas, if the board granted the special permit, would he accept the condition that the allowed business use would be limited to offices, businesses or professional offices? Mr. Smalanskas replied that he would have no problem with that. Mr. Olson explained that there would probably be more traffic with other types of business uses, and noted that it is a small lot.

Mr. Femia then asked how people would get to the apartments, and if there would be a stairwell to the building in the middle of the two apartments? Mr. Smalanskas replied that they thought about that, possibly something on the end, leading to each apartment, but that will be decided in the design phase of the project. Mr. Femia added that he looked at the 1984 decision, and noted that there had always been a business zone there, but always a residence on it, and thought that it would be a good idea to have both there. Mr. Olson explained that mixed use of business and residence are allowed in a business zone, and that the only reason the applicant is before the ZBA is because the lot is nonconforming. Mr. Olson then told the board, that under Section 1.4B, the standard for granting the special permit is in cases where the change is not substantially more detrimental than the current use.

Mr. O'Neil thought that the proposed project would be harmonious with the other businesses and dwellings in the area. He added that there would be no parking at night except for the two residences, and opined that traffic flow during the day would be at a minimum and it would not be likely that there would be 15 to 16 cars parking during the day at one time. Mr. Olson noted that the parking lot would also be next to the gas station; Mr. O'Neil opined that there would be more of a traffic problem from the gas station. In response to Mr. Femia, Mr. Smalanskas replied that there would be no elevators, and Mr. Femia wondered if, with two handicapped parking spaces, that would be an issue?

Mr. Olson then noted that, in Section 6.2, there was a list of standards for a special permit, and he read them aloud. Mr. O'Neil responded that they have a dumpster area, a privacy fence, some landscaping, and snow storage, and that there would be no loading or unloading per se. Mr. Smalanskas added that they have hookup to sewer and water, and gas is on site. Mr. Olson informed him that they could not have a chain link fence, and verified that they said they will meet all required setbacks, and added that Planning Board will be sure that they are compliant. Also, he verified that use will be compatible and in harmony with all other adjacent properties in the area.

Mr. Rajeshkumar said that his only concern was that he did not want the number of bedrooms in the apartments to increase; Mr. Smalanskas agreed with Mr. Olson that a condition would be no more than two bedrooms. Mr. Rajeshkumar also said that concerns were parking, traffic and the schools, and thought that this should be in writing as a condition; Mr. Orciani agreed. Mr. Smalanskas responded that there would be probably one, possibly two bedrooms, but no more.

(Next, Mr. Olson opened the hearing to public comment; he instructed each person who will speak to clearly state his/her name and address for the minutes). First to speak was Milo Howard of 17 Pierce Street; he said that he had no issues with the project, and would like to see Mr. Smalanskas develop the property. (There were no further comments from the public).

Mr. Olson then told Mr. Smalanskas about comments from the Conservation Commission, Board of Health, and Planning Board. William Chase, Chair of the Conservation Commission, was at the meeting and said that he liked the project, and thought that it was well done. He said that Concomm's concerns would be sheet flow on the highway, lumens from lights, recharge, snow storage and dumpster location, and the applicant dealt with these. In response to Mr. Rajeshkumar, Mr. Chase opined that there would not be a problem with traffic based upon what the applicant wants to do with the property. He thought that the gas station and Dunkin Donuts were the main sources of traffic, but that lights control the traffic, and as a taxpayer, he thought it was the best use of the land. He also opined that the lot has sufficient parking, a good curb cut, and is at a good angle, and he thought the applicant had done everything that he could with it. Mr. O'Neil added that the light lumens were addressed.

Mr. Olson continued, that they must consider if they grant a special permit, there must be evidence that the applicant will comply with zoning; also, the drawing depicts the largest area possible, but wanted the applicant to make sure that he is not limited so that he will have to come back. He also verified the building area as being the maximum; Mr. O'Neil replied that the footprint maximum is 4,000 square feet, but they do not have the design yet. (Mr. Olson noted that this was all pending Site Plan Review, where Planning Board might say that certain things must be changed). In discussion with the other members, the board agreed that, if they issued the special permit, that they did not want the applicant to change the plan after the fact; they agreed that the area should not be greater than 40' x 100'. Mr. Femia asked if there was a height requirement for the building? Mr. Olson replied that there is.

Mr. Witkus commented that he did not approve of apartments above businesses, and wanted all businesses in the building. Mr. Femia responded that the applicant had the right to do that. Mr. Olson and Mr. Rajeshkumar commented that mixed use is allowed in a business zone according to Planning Board's letter, but said that this was an interesting issue.

In response to a question from Mr. Femia, Mr. O'Neil replied that they will probably widen the curb cut. Mr. Femia asserted that the bylaws say it must be 24 feet. Mr. Smalanskas responded that DOT issued a permit already.

Mr. Femia then commented that he did not see a problem with traffic, noting that there are four businesses next to the applicant's property, and he does not see many cars. Mr. Rajeshkumar asserted that there is traffic in that area from the gas station and Dunkin Donuts, and that would be in addition to the applicant's building. Mr. Femia asserted that, along Route 12, there will be traffic anyway and did not see an issue with this.

Mr. Olson then instructed Mr. O'Neil that he fill out the petition again but mention Section 1.4B as the relief, rather than 3.2. Mr. O'Neil offered to add that to the plans also. In response to Mr. Femia, Mr. Olson listed as other conditions that there will be no more than two bedrooms in each residential unit (4 in total), the business uses would be as offices, business or professional, as was allowed by right under Section 3.2F (and he did not want the use to expand due to the size of the lot), and the building will not be greater in size than 40' x 100'.

Mr. Femia then made a motion to close the public hearing; Mr. Rajeshkumar seconded. Mr. Rajeshkumar added that it would be good use for the lot, but opined that it was a very small lot. Mr. Olson responded that it is a business district). All voted in favor of closing the public hearing.

(The board then deliberated). Mr. Rajeshkumar then commented that they needed a supermajority vote to pass the request. Mr. Femia asked Mr. Smalanskas if he will submit the current plan or redo it, and if he will make the building smaller? Mr. O'Neil replied that they will probably wait for Planning Board's comments, but they will also have details of the building. Mr. Olson also reminded Mr. Smalanskas about amending the petition and advised him to get it to the board as soon as possible, even by email.

With no other comments, Mr. Femia made a motion to approve the special permit request for 249 West Boylston Street, under bylaw Section 1.4B, with conditions specifically added, and to redo the petition application to signify Section 1.4B instead of 3.2. Mr. Orciani seconded. Mr. Olson reiterated that they needed 4 "yes" of 5

votes to pass the request. The vote was 5 "yes", 0 "no", 0 "abstain", therefore the motion was accepted. (Mr. Femia added that the decision will be issued within 14 days, then there is a 20-day appeal period; he added that he thought it will be good for the Town).

**Update on fee schedule and consultant fee format:**

The board decided to continue this topic to the February 21 meeting.

Mr. Olson then asked if there was anything else to discuss in open session, before the Executive Session began? Mr. Femia asked about what is done with left over money from 40B projects? He wondered if it goes back to the developer when the project is completed, or when the cost certification is done? Mr. Olson replied that this was his understanding, and the developer should come to the ZBA to ask for the money. Mr. Femia also asked Ms. Goldstein how the ZBA account looked regarding funds for her pay; she replied that the situation looked good

**Next Scheduled ZBA Meeting:** Thursday, February 21, 2019, at 7:00 p.m.

**ZBA Monthly Financial Report:**

Mr. Olson read over the latest report, dated 12/31/18.

With no further business to discuss, Mr. Femia made a motion to adjourn the Open Session at 8:14 p.m.; Mr. Rajeshkumar seconded. All in favor.

**(OPEN SESSION ENDED @ 8:14 pm)**

**NEXT MEETING**

**Thursday, February 21, 2019, 7:00 p.m.**

**MOTION TO ADJOURN**

**Motion Originator** Mr. Femia

**Motion Seconded** Mr. Rajeshkumar

**Time of Adjournment** 8:14 p.m.

**Signatures**

**Nathaniel Orciani**

Submitted by: **Toby S. Goldstein**

**Date Submitted:**





