



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting
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Thursday, February 21, 2019/7:00 p.m./Selectmen's Meeting Room

Members Present

Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia, Charles Witkus, Mark Wyatt (Associate Member) and Secretary Toby Goldstein

Members NOT Present

Nathaniel Orciani (Clerk), John Benson (Associate Member) and Andrew Feland (Associate Member)

Invited Guests

Welcome – Call to Order

Time: 7:14 p.m. (by Mr. Olson)

Approval of Previous Minutes

Continued until next meeting

Motion Originator N/A

Motion Seconded N/A

Treasurer – Financial Report

Mr. Olson reviewed the latest financial statement, dated 1/31/19, but it was not discussed.

Motion to Accept N/A

Seconded N/A

At 7:14 pm, Mr. Olson called the meeting to order; he announced that four of the Full Members were present and one Associate Member (Mr. Wyatt). He announced that a public hearing was scheduled for 7:15. He mentioned one item on the agenda, an update on fee schedule and consultant fee format; he said that the fee schedule was updated last year, and he is working on updating consultant procedures but wanted to work on it before bringing it to the board and he asked if there were any questions at this time.

Mr. Femia then asked about work that the board was going to do on ZBA filing forms. He mentioned a concern regarding Comprehensive Permits; he mentioned that an outline was done when he first came onto the

ZBA board. He mentioned a budget item for the Town for technical use and suggested that it could be used for the updating of the outline, and thought the job of revising the outline should be sent to the person who wrote the 40B handbook. He mentioned that they tried to have the Town Administrator help with it, but it never went through, and he was concerned in case another 40B application came in. Mr. Olson responded that there was now an interim Town Administrator, so they can discuss it. Mr. Femia also mentioned that another SHI report came out, and 8.17% was the figure for the Town; 10% would create a "safe harbor" for the Town so far as 40B projects was concerned.

Minutes of January 17, 2019 (Regular and Executive Sessions):

Prior to this evening's meeting, Mr. Olson allowed Ms. Goldstein to continue the minutes to the next meeting (March 21).

Public Hearing, J H Energy USA, LLC, petition for Variance from the minimum frontage requirement of Section 4.2 of the Zoning Bylaws, for the division of land into two lots for construction of two industrial buildings along the northeasterly portion of Hartwell Street (across from the American Legion Post):

(Amanda Risch and Patrick McCarty represented). (Mr. Femia read aloud the public hearing notice). Mr. Olson explained to the applicant's representatives how the hearing would be conducted; the applicant should explain his request and why he had submitted it, the board would ask questions, and then the hearing would be open to the public for questions and comments. Mr. Femia then suggested to Mr. Olson that he wanted to be sure that the petitioner knew that there were three components that needed to be met for a variance, and that the petitioner should have read and understood what he needed to fulfill for the variance.

Ms. Risch then introduced herself and Mr. McCarty, and she informed everyone that they were there to request a variance from minimum frontage required under the zoning bylaws. First she talked about the project and the property and where things stood at this time. She mentioned that the property was purchased in November, 2018; it was undeveloped, vacant land off of Hartwell Street, across from the American Legion Post; the property is currently located in an industrial zoning district. She added that the applicant has since the purchase begun site survey work and development of preliminary engineering plans; the applicant plans to build two commercial industrial buildings on two separate lots. Lot 1 would be 3.2 acres in size, whereas Lot 2 would be 13.2 acres.

Ms. Risch next wanted to discuss the basic concepts of the plan. She continued that the area is unique for several reasons. The railroad abuts the entire west part of the property. On lot 2 are wetlands which complicate the development of the property. There is a unique shape to the property; it is a long and narrow parcel. They opined that splitting it into two lots would be the best configuration for the property. She said that both lots met the minimum dimensional requirements in the bylaws except for minimum frontage on Lot 2; Lot 1 frontage would be 150 feet, but Lot 2 would be 134 feet. She said that Planning Board told them in their opinion letter that they may also need a variance for minimum lot width because of the 134-foot frontage. They propose one commercial drive, approximately 24 feet, reducing the number of curb cuts that are necessary, and they asserted that there will be less impervious due to the common access and it will reduce environmental impact. They feel the variance won't take from the meaning and purpose of the bylaw. They had the option to apply for a special permit if they kept it as one lot under common ownership, but they felt it best to have the configuration of two separate lots, with two separate owners.

In response to a question from Mr. Witkus, Ms. Risch replied that they do not have occupants at this time, and the first place they needed to stop was before the ZBA, then they ultimately will need to appear before the Conservation Commission and Planning Board for Site Plan Review.

Mr. McCarty continued, that there is a lot of development on Hartwell Street. He mentioned the expansion of the Curtis Building, which had supplied 200 jobs, and the renovation of 127 Hartwell, occupied by a

company from Worcester, which had supplied close to 200 jobs (from 110 last year). He noted that they were not involved with the renovation of 100 Hartwell. He asserted that business is good in West Boylston because of the convenient location, tax rate, and that the Town is good to work with, so the applicant opined that two industrial buildings would continue to attract businesses to West Boylston. He continued that last month the Planning Board reviewed their conceptual plan informally to get some feedback, and he reiterated what Ms. Risch said previously about the provision in the zoning bylaws about the possibility of obtaining a special permit for an industrial park; everything would be as it appeared on the plan this evening, but they would have to maintain single ownership of the land, and each person would own their own building but would have to own the land under common ownership, and it was agreed that it would be less complicated and cleaner from a development perspective to have two separate lots; but they would need frontage relief for Lot 2 in order for them to have two ANR lots. Mr. Femia commented that that plan differed from what they were looking at right now. (Mr. McCarty was referring to a plan on a board with colors). Mr. Femia noted that, regarding parking, no parking is allowed in the front of the building according to the bylaws, and asked, because a separate drive was needed for both lots 1 and 2, where would the front of the building be? He explained that where the front was located would be what would depend on where the parking could be. Mr. McCarty suggested on Hartwell Street. Mr. Rajeshkumar suggested that it would be where the main door is located. Mr. McCarty responded that he and the Building Inspector needed to talk, but pointed out that the purpose of tonight's hearing was the frontage variance, and that this plan was conceptual and was not by any means the final plan. Mr. Olson suggested that there may possibly be amended plans after this evening. Mr. McCarty continued that they will complete the surveying, Site Plan Review, and Concomm requirements, but reiterated that, this evening, the subject was the short frontage on Lot 2. Mr. Olson added that it would be good to discuss that question about the front of the building with the Building Inspector, and that it was his understanding that the front abuts the street.

Mr. Femia then asked if they met the required setbacks? Mr. McCarty replied that they did meet them, just not the frontage requirements. Mr. Femia asked if J H Energy will maintain ownership of the property, or sell the land and buildings? Ms. Risch replied that they will probably at some point sell the lots to different owners. He asked if they will obtain an ANR to split the properties? Mr. McCarty replied that, if the board issues the variance this evening, they would as part of the detailed Site Plan package prepare an ANR for endorsement, upon receiving Site Plan approval. Mr. McCarty then showed Mr. Witkus the American Legion hall across from the property.

Mr. Olson then asked about Lot 1; he noted that it has 150-feet of frontage, and asked if that is maintained all the way to the building? Mr. McCarty replied that it fully conforms (he pointed out on the plans that the frontage is maintained greater than 150 feet all the way up to the building) to all requirements; Lot 2 has a short frontage of 134-feet. But, he said, if they did an ANR and shaved off Lot 1, leaving out Lot 2, Mr. McCarty explained what would happen if they did something called "Infectious Invalidity", where they created one conforming and one non-conforming lot, the non-conforming lot would cause the conforming lot to be non-conforming, so they are here tonight to try to create two lots.

Mr. Olson then questioned ownership of the land beneath Lot 2, where the railroad tracks are located. Mr. McCarty showed the board the area beneath Lot 2; he pointed out that the railroad company owns that land, but regarding land behind there, there is a five-foot strip here and there that they own, and Rob Fuller owns land in the middle. He told Mr. Olson that Mr. Fuller owns property beneath also, but as RJF Properties (this just received Site Plan approval from Planning Board). Mr. Olson opined that part of the applicant's case is that Lot 2 does not have the required frontage because of the railroad tracks. Mr. McCarty agreed and added that this lot is in the Watershed Protection Act overlay because of an intermittent stream that runs along the railroad tracks, and there is a 200-foot and 400-foot offset from that over which DCR has jurisdiction, so there is further inhibited development of the land. He said they are therefore moving everything to minimize impact to those areas.

In response to a question from Mr. Femia, Mr. McCarty replied that the lot sizes are 3.2 and 13.2 acres, respectively, of Lots 1 and 2. Mr. Femia asked where all the land was for Lot 2? He also noted that the building on Lot 2 seemed wider than the one on Lot 1. Mr. McCarty showed that the land goes back, behind the baseball field and self-storage, and the frontage goes from 165-feet down to 134-feet. He noted that, due to the Watershed Protection Act (Mr. Femia noted that the property is in a primary zone), they cannot build in the 200-foot zone, and in the 400-foot zone they are limited by impervious area requirements, so the building is tucked up and forward as much as possible to minimize the impervious area.

Mr. Femia then noted that he did not hear the attorneys mention any of the three conditions for a variance. Mr. McCarty suggested that they discussed the irregular shape to the property. Ms. Risch added that there are conditions affecting the land but not generally affecting the zoning district where the premises are located; she said that they touched upon hardship to the applicant due to transactional costs or way that they are thinking of developing the property, that it would be better to split the property, and that relief would not cause substantial detriment to the public good, because in this case, with the common drive the lots' shared entrance would not hurt the public or take away from the bylaw. So, she said that this is why they feel that they have fulfilled the requirements for the variance.

Mr. Rajeshkumar suggested that the property could stay as one lot, and asked if the reason they want to split up the lot is so that they can sell it? Ms. Risch responded that they weighed all the factors; looked into other things such as condos, and decided they would be a hardship on the applicant. She said that there would be a shared point of access, but opined that it would not hurt anyone. Mr. McCarty added, that if they took the property line off of the plan, they could appear before Planning Board for a Special Permit and he asserted that it would look the same, variance or special permit. Mr. Rajeshkumar then asked, if they obtain the variance, is there a chance they will sell both lots, or obtain a special permit for two buildings but one owner? Mr. Femia then asked, if an ANR is done, Lot 1 has the frontage, but could Lot 2 could have a special permit and approval because it's greater than 120 feet? Mr. Olson replied that this would be the case by residential bylaw only; so they need a variance, regarding frontage in an industrial zone. Mr. Rajeshkumar commented that the plan is not clear now. He described how Lot 1 may have to come back, as the front shows parking and the buildings and boundaries are not clear. Mr. Femia opined that they may have to come back before the board. He explained that Planning Board will tell the applicant how many parking spots they'll need, and since most of the property is in the wetlands, perhaps this could be a parking issue. He opined that Planning Board might say to go back to ZBA for a variance on the parking in front. Mr. McCarty responded that they would do that if they were told to do so, but explained that they have 90 parking spaces and only need 44, so they could get rid of the extra. Mr. Femia suggested getting rid of the ones in front of the building.

There was some question as to what was the front of the building. George Tignor, Building Inspector, was present at the meeting, and he responded that, in this case, because the frontage is on Hartwell Street, it is considered the front of the building, and the address would be approximately 200 Hartwell Street (Mr. McCarty corrected, 200 and 210 Hartwell Street).

Mr. Olson continued that the configuration of the lot was not what was being asked this evening; the issue was a decrease in minimum frontage of Lot 2, but the plans need confirmation with zoning and are subject to change. He instructed the applicant to come back before ZBA or Planning Board if they need further relief, but this evening, they were discussing frontage and splitting of a lot into two. Mr. McCarty explained that they showed this conceptual plan to the board to show that their proposal would be of no detriment to the public. Mr. Rajeshkumar questioned if there is hardship involved, as he opined that the lot could stay as one lot rather than being split and sold as two? Mr. Olson continued, that when there had been before the board special permit requests to decrease the frontage in a residential zone, they had the same theory, to split one lot into two.

Mr. Femia then asked if the frontage would meet all the way on the lot? Mr. McCarty replied that it will. Mr. Femia then opined that he did not see hardship involved.

Mr. McCarty then explained, giving as an example someone looking to move their business to West Boylston and build a 55,000 square-foot building, at \$150 to \$200/square foot, at a cost of ten million dollars, if they had the option to buy it independently and control it or have someone else own the lot, what would they rather do? He asserted that it would be a cleaner and more attractive transaction to own your own lot, and that it would involve more legal work if it stayed as one large lot.

Mr. Femia opined that the applicant needed an ANR first. Mr. Olson said that the frontage was not met, and asserted that they cannot create a nonconforming lot and verified that they did need to come to the ZBA first.

Mr. Witkus then asked Mr. McCarty about the stream on the other side of the railroad tracks there and if they had contacted DCR? Mr. McCarty replied that they submitted a variance request to DCR. Mr. Witkus asked if the board would be wasting their time if DCR rejects their request? Mr. McCarty replied that this would not necessarily be the case, and asserted that they would be decreasing impervious area. Mr. Witkus then asked if there was swamp on the other side? Mr. McCarty showed the board the wetlands, and said that Ecotec flagged the wetlands. In response to a question from Mr. Witkus, Mr. McCarty replied that the stream is clean, and he explained that Shell Oil has a professional to monitor the site since their tanks were removed, and they monitored the site when the other buildings were constructed, and he asserted that the poplar trees were planted to decrease contaminants by their roots. He mentioned that when they built the 11-foot infiltration basin they could completely see the soil and test it and have been doing this all along..

Mr. Femia then asked about the bridge and what weight it could handle? Mr. McCarty replied that it can handle 50 tons. Christopher Devillers, 8 Worcester Road, Sterling, MA, an engineer who owns land at 211 Hartwell, explained that MA DOT owns the bridge, and asserted that it is structurally deficient; he said that he had a report from MA DOT.

(Mr. Olson then opened the discussion to public comment). Mr. Devillers continued that he and his siblings own 211 Hartwell, and that they never had problems with development or issues with the American Legion, which is across the street from the property in question. Regarding the bridge, he said that it is a single lane bridge (according to MA DOT), and explained that, in 1996, it was taken from elsewhere as a temporary fix to replace the pony bridge for the American Legion and 211 Hartwell St. He said that, from a conversation with MA DOT a couple of weeks ago, to change its use with increased traffic and weight of vehicles and equipment would deteriorate it quicker. He opined that it is unsafe, and added that the line of sight is bad on the bridge. He wanted to know what the applicant was planning for the bridge? (Mr. Femia responded to Mr. McCarty that he did not have to answer that question). Mr. Rajeshkumar added that it would depend on the kind of businesses planned, too. Mr. McCarty said that they could discuss that with Planning Board.

Next to speak was Rick Freeman, 159 Hartwell Street, of the American Legion. He said that they look forward to hopefully more business, with more people and more rentals for the Legion hall.

Next was Mike Mulryan, 100 Hillside Village Drive, also of the American Legion. He was concerned with the bridge; he was concerned with the single-lane, and poor visibility on both sides. But, he thought it would be good to increase business, but if people think it is hazardous with an increase in traffic, it could be detrimental to both sides. He opined that it was now dangerous, and will be more so with an increase in traffic.

Mr. Rajeshkumar responded that two business are planned, and the bridge is a different concern. He said that Planning Board will do Site Plan Review and will look at the bridge issue and make a determination.

Mr. Devillers responded, that if the use is changed, it is up to the developer to petition MA DOT, and they will say what's prudent, and they will have the authority to shut it down.

Next to speak was Lary Lindquist (address given was also 159 Hartwell Street). He said that the citizens want to be informed; he said that they heard different stories, but asserted that the property owners haven't been contacted. He also said that, in 1958, Shell Oil gave them permission to use horseshoe pits, which is 80% of the profit for the Legion post; if the soil is taken out, they have to relocate them. They have been maintaining the pits. Mr. McCarty replied that they are on board to help the American Legion to relocate the horseshoe pits (he

gave Mr. Lindquist his contact information). Mr. Lindquist responded that they want to know who owns it and what they will do, because they have heard rumors. Mr. McCarty replied that he would meet him there.

Mr. Olson then informed everyone that the board had feedback from three Town boards to have on the record. First was the opinion letter from Planning Board. It said that, if the variance is granted to create a second lot, the frontage cannot go below 134 feet. If that is not possible, they can come back. Mr. Olson mentioned that there was confusion as bylaw Section 4.1.E interpretation was that the frontage from street to building will not be less than minimum required frontage, but here they would be reducing the minimum required frontage. Mr. Femia then read the bylaw from the Planning Board's letter. Mr. Olson then explained to Mr. McCarty that, for Lot 2, the side lot lines can never be less than 134 feet apart; Mr. McCarty replied that at no point will it ever be narrower. Mr. Olson said it will be consistent with how it was done in the past for residential lots. Also, he mentioned that Planning Board's letter said that parking in the front should be worked out between the Building Inspector and Planning Board. Mr. Olson then mentioned, regarding Board of Health and DPW feedback, that there were no issues raised by the proposed project (particularly because the property is connected to Town sewer). Regarding Conservation Commission, the comment was that there were questions by the Chair but they would not interfere with the ZBA decision, and that the applicant will have to appear before the Commission at some point. Mr. Olson mentioned that there was a question by email from a resident, asking for contact information for the applicant, and he replied to her that it is public information and for her to look it up. (Mr. McCarty then thanked everyone for their time and for listening and coming out to the hearing, and he opined that he saw this as positive for West Boylston).

With no further comments or questions, Mr. Femia made a motion to close the public hearing. Mr. Rajeshkumar seconded. All in favor. (The vote was 5-0). Next, the board deliberated. Mr. Femia said that he still had doubts. Mr. Olson then summarized, that the applicant proposed splitting one lot into two lots, where one lot is conforming on its own, and Lot 2 meets all requirements except it is short 16 feet in frontage. He suggested they consider that it is an elongated lot, which has 6 times the minimum acreage for an industrial lot, so it is a good size, but is only 16 feet short on frontage, which might be due to the railroad tracks.

With no further discussion, Mr. Olson asked for a motion; Mr. Rajeshkumar made a motion to approve the variance request for J H Energy USA, LLC, for reduction of frontage of Lot 2 from 150 feet to 134 feet; the property is located at the westerly side of Hartwell Street. Mr. Witkus seconded. (Mr. Olson and Mr. Rajeshkumar informed the applicant that the motion needs four "yes" votes to pass; a "yes" vote will approve, a "no" vote will deny it and keep the property as one lot).

The vote was as follows:

Mr. Rajeshkumar – "no"

Mr. Wyatt – "yes"

Mr. Olson – "yes"

Mr. Femia – "no"

Mr. Witkus – "yes"

The vote was (3) yes to (2) no, therefore the variance was denied.

Mr. McCarty then asked the board if they would consider reopening the public hearing so that they could withdraw the request without prejudice? He explained that it would give them time to go back and see if there would be another idea that would work. Mr. Olson replied, that he did not know about doing that, as they already had a public hearing and voted on it. Mr. Femia said that the applicant cannot come back for two years unless they come back with a proposal that is substantially different and then the board can consider it. Mr. Witkus thought that the board should give the applicant a chance to re-engineer the proposal and that they should be able to come back. Ms. Risch explained that being able to withdraw without prejudice would allow them to start at zero again rather than start out with a denial from the ZBA before going to the other boards. Mr. Olson asked, if

