



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, February 18, 2020/7:00 p.m./ <u>NOTE: THIS MEETING WAS HELD REMOTELY (ZOOM), ACCORDING TO GOV. BAKER'S INSTRUCTIONS, DUE TO THE CORONAVIRUS AS TOWN HALL HAD REMAINED CLOSED. PUBLIC ACCESS TO THE MEETING WAS ALLOWED THROUGH ZOOM INSTRUCTIONS GIVEN ON THE POSTED MEETING AGENDA.</u>
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Members Present	Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), Nathaniel Orciani, Andrew Feland (Associate Member), Mark Wyatt (Associate Member) and Secretary Toby Goldstein
Members NOT Present	Chris Olson (Chair), John Benson and Charles Witkus (Associate Member)
Invited Guests	N/A

Welcome – Call to Order **Time: 7:00 p.m. (by Mr. Rajeshkumar, who sat in as Chair)**

Approval of Previous Minutes **Minutes of January 21, 2021**

Motion Originator: **Mr. Femia**

Motion Seconded: **Mr. Feland**

Treasurer – Financial Report **N/A**

Motion to Accept **N/A**

Seconded **N/A**

At 7:00 p.m., Mr. Rajeshkumar, filling in as Chair for Mr. Olson, called the meeting to order; he read the names of members present, noting that associate members Andrew Feland and Mark Wyatt were present to replace full members Mr. Olson and Mr. Benson. He also read aloud Governor Baker’s order regarding remote meetings and the Open Meeting Law (given on the meeting agenda), noting that on the agenda are the instructions for joining the Zoom meeting.

Minutes of January 21, 2021 Meeting:

After review of the draft minutes by the board, Mr. Femia made a motion to accept the minutes as written. Mr. Feland seconded. Mr. Rajeshkumar took a roll call vote:

Mr. Orciani – “yes”

Mr. Feland – “yes”

Mr. Wyatt – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the minutes were approved as written.

Continued Public Hearing, Branded Realty Group II, LLC, for a Special Permit under Section 3.2.F.4 of the Zoning Bylaws for the construction of a new 2,400 square-foot food service building with drive-through window with a 180-foot drive-through lane at 262 and 264 West Boylston St., to replace the existing Dunkin’ on the adjacent lot at 244 West Boylston Street. – PETITIONER HAS REQUESTED TO WITHDRAW PETITION WITHOUT PREJUDICE.

Mr. Rajeshkumar informed those present that the petitioner requested in writing by email to withdraw the petition without prejudice. Mr. Femia made a motion to accept the request to withdraw without prejudice. Mr. Feland seconded. Mr. Rajeshkumar took a roll call vote:

Mr. Femia – “yes”

Mr. Wyatt – “yes”

Mr. Feland – “yes”

Mr. Orciani – “yes”

Mr. Rajeshkumar – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain”, therefore the petition was withdrawn without prejudice. (In response to Mr. Femia, Mr. Rajeshkumar replied that there was not specifically any particular reason for the petitioner’s request, but he heard that one reason that the petitioner decided not to pursue was that there were so many permits required and approvals needed from boards. (Mr. Rajeshkumar then wanted to cover any “Other Business” because it was too early to start the public hearing scheduled for 7:15 in case anyone else wanted to join the meeting).

OTHER BUSINESS:

Treasurer’s/Financial Report: Ms. Goldstein gave the board a short summary of the latest report. As Mr. Olson was absent this evening, Mr. Femia suggested that this be put on the agenda for the March 18 meeting.

Other Paperwork: Ms. Goldstein replied to the board that there was no paperwork to be signed or anything to be read.

Future ZBA Filings: Ms. Goldstein informed the board that there was only the continued public hearing for 24 Sterling Place scheduled for the March meeting and that there had been no other information received about that; otherwise, there were no new filings that came in.

Public Hearing, Casey Lemoine for Special Permit for an Accessory Apartment within the attached garage of a single-family home at 107 Newton Street, West Boylston, MA, pursuant to Sections 3.2.B.6 and 3.4 of the West Boylston Zoning Bylaws:

(Mr. Rajeshkumar read the public hearing as was listed on the agenda; Mr. Femia read aloud the public hearing notice). (Mr. Rajeshkumar discussed the rules for the public hearing; the petitioner and attorney will go over the application and present their information, the board members will ask questions, then the public will ask questions before the public hearing is closed. He noted that a supermajority vote will be needed to approve or deny the special permit). (Representatives were Atty. Francis Russell and Casey Lemoine). Mr. Russell explained that Mr. Lemoine purchased the property in June of 2016, and constructed his single-family home in 2017, where he has lived since then with his wife. Mr. Russell said that Mr. Lemoine's purpose for construction of the accessory apartment was that he and his wife would like to start a family; his in-laws are retired and if his in-laws move into this apartment, Mr. and Mrs. Lemoine would be able to afford to work and have care for their children. Mr. Russell asserted that the submitted plans show that the design of the home will be in compliance with the single-residence neighborhood and make it an affordable place for the in-laws to live. He said that Mr. Lemoine went over the plans with the Building Inspector (George Tignor), and, putting up plans revised according to Mr. Tignor's instructions, pointed out the proposed garage and accessory apartment. Mr. Russell asserted that the recent drawings of the outside of the property show that it will fit in with the design of the existing home, and he thought that they have designed it with the purpose of the bylaw in mind and will keep the fairly new home as a nice-looking property. He described that the apartment will be 694 square feet in area, with a single bedroom, and he believed that it will comply with bylaw Sec. 3.4; Mr. Lemoine added that the approximately 700 square-foot area will be less than the maximum of 10 percent of the total area of the structure, which is required in the bylaw. Mr. Russell asserted that, according to the plans, the accessory apartment will be very much a part of the single-family home, which is Mr. Lemoine's full-time residence (Mr. Femia noted that Mr. Lemoine submitted to the board a notarized letter stating that he will be living at the residence). He noted that the accessory apartment use will stay with this owner and not be passed on if the house is sold, although he opined that Mr. Lemoine intends to be there for a long time. He asked the board to act favorably upon this application, and said that he would let Mr. Lemoine answer specific questions.

In response to Mr. Rajeshkumar, Mr. Russell replied that the entire area of the structure including all of the floors of the house is approximately 8,000 square feet, with the living area approximately 3,500 square feet; but his interpretation of the zoning bylaw is that the square footage is of the entire structure, not just the living space of the home. In response to another question by Mr. Rajeshkumar, Mr. Russell replied that there is garage space underneath the house now which Mr. Lemoine intends to be a workshop, and noted that Mr. Lemoine did a lot of the work in his home. Mr. Femia responded that he heard that there will be two garages, with the accessory apartment being built on top of the existing garage, and asserted that they will need a foundation from the house and existing garage to be connected to the new garage and he asked how that would all be done? Mr. Lemoine responded that the foundation would connect from the existing garage with a breezeway so that people could pass through from one dwelling to the other, and in response to Mr. Femia's question regarding the size of the breezeway, referring to the revised plan, Mr. Lemoine pointed out the existing garage, foundation, connector, and then the proposed garage, and noted that the elevation climbs as one goes back so this addition will tuck it into the hill a little bit. He added that the existing driveway will extend to the doors of the new garage. Mr. Lemoine responded to Mr. Femia that the setbacks are all met, and that the breezeway will have a roof and a hand rail and they are not planning to enclose it but would like to do so. Regarding a question from Mr. Femia about egress/ingress points once the breezeway, garage and accessory apartment are built, (referring to the floorplan) Mr. Lemoine described that the grade comes in on the left side, they will remove the entrance shown in red, the door on the left will enter the breezeway, the door on the right will exit out of the garage, and they can walk out

onto the hill through a slider on the second floor which will be built more into the hill. He noted that the exit on the bottom left doesn't go into the garage, but into a space with a door leading to the upstairs. Mr. Femia stated concern that, if the petition is approved, the attic space could become a second bedroom. Mr. Lemoine responded that the attic will serve as storage space for his in-laws, noting that they are moving out of their present home and he was trying to work around the 700 square-foot size limit of the accessory apartment. In response to Mr. Femia, Mr. Lemoine replied that a stairwell in the living room would go down to the left and someone can go out to the breezeway; he replied that a slider in the kitchen would go to the outdoors. Mr. Feland asked if the breezeway connecting the two structures qualifies as connecting the foundations? Mr. Lemoine responded that a full four-foot crosswall foundation will connect the structures, and noted that he discussed that with Mr. Tignor. He added to Mr. Femia that there is Town water and sewer. Mr. Femia then commented to Mr. Rajeshkumar that he saw a problem, that Planning Board based their opinion (on file) on the first drawing submitted by Mr. Lemoine and not the most recent plan that was requested by Mr. Tignor which the board now has. Mr. Femia explained that Planning Board opined that ZBA should not approve the special permit because the petitioner would be creating a second housing unit in the single-residence district and it cannot revert back to single-residence at the time of sale if it is sold; he noted, with an accessory apartment, that the special permit does not go to another owner if the house is sold. Mr. Rajeshkumar responded, that in the bylaw Sec. 3.4.C, an accessory apartment must be a separate housing unit, with its own sleeping area and sanitary facilities, confined in a single structure but functioning as a separate unit, and that the accessory apartment shall be a subordinate part of the home and not increase the square footage of the original structure by greater than ten percent; if the living area is 3,500 square feet, and the size of the accessory apartment will be around 700 square feet, that will be greater than 10 percent. Mr. Russell asserted that the definition of "structure" mentioned in the zoning bylaws of West Boylston does not define living area but everything contained within the four walls and roof of the structure; so, he asserted that when looking at structure, they are looking at more than just the living area, therefore the proposed square footage of the accessory apt. would meet the criteria. Mr. Rajeshkumar continued that Board of Health's opinion was that, because there is public sewer, they had no objections to the project. He also said that the Conservation Commission's opinion was that there were no conservation issues to prevent the work, but they are against the proposal as the zoning district is single-residence, not multi-family, and they opined that this was a more important issue.

Mr. Russell responded, asserting that they are applying for the special permit within the zoning regulations of West Boylston, not a prohibited use, noting that Sec. 3.2 gives them permission to build the accessory apartment provided they meet the criteria; in response to the Conservation Commission, he asserted that they are attempting to do this within the zoning ordinance and in compliance with the zoning bylaws. Mr. Feland added that the petitioner verified that he is not looking to create a two-family dwelling, but a single-residence with an accessory apartment.

Mr. Tignor spoke next, explaining that Mr. Lemoine had requested a zoning interpretation from him and all Mr. Tignor had was the original print that showed the plot plan but which had no information of what he was planning to put on the property. Mr. Lemoine then gave him the new print, which opened up other thoughts of how he could put together a package upon which the ZBA could vote. Mr. Tignor continued that the bylaws mention a couple of situations, that of the accessory apt. being no more than 10 percent of the square footage of the original structure, and the definition of structure referring specifically to floodplain management and insurance coverage purposes. If the board felt that the structure includes the basement, two floors and the roof, which is about 9000 square feet, 10% of that would be 900 square feet for the accessory apt. But, he opined that it was not clear as to what could be increased in size less than 10 percent, and his interpretation was that he could not issue a building permit but Mr. Lemoine would have to obtain a special permit from the ZBA according to the bylaws. Mr. Russell asserted that living area is different from the total structure. He opined that the 10% limit is so that the accessory apartment does not overtake the character of the building, and that the structure as defined in the

bylaws includes the basement, first, second floors and attic space. He opined that other homes in the area with accessory apts. do not comply with that. (Mr. Femia noted that the bylaw states “the original structure”; Mr. Tignor asserted that the foundation is included). (The board members, petitioner, attorney and building inspector then discussed their interpretations of that bylaw; Mr. Russell opined that the definition of structure meant the walled building, Mr. Femia opined that the bylaw stated the original structure, not the living space, and Mr. Tignor added that there have been no changes so this is the original structure).

In response to Mr. Femia, Mr. Russell replied that the size of the breezeway will be 120 square feet. Mr. Lemoine added that they hope to enclose it, and replied to Mr. Femia that the roof will be connected to what is there already and connected to the new construction. Mr. Tignor noted that he wouldn’t approve a closed-in structure from the garage to the house because it would hinder egress, and that it would not be allowed to go from the breezeway to the garage but one would have to go out to ground level and not into another structure. Mr. Femia surmised that there can be a roof so long as there are no walls, and all will be joined in one structure.

Mr. Tignor continued that he was not aware off the plan of the garage being changed into a workshop but he thought that one garage was for Mr. Lemoine and his wife and the other for the in-laws. At Mr. Russell’s request, Mr. Lemoine explained that his car, his wife’s car, his motorcycle, and tool boxes would go in the new garage, and explained that sometimes he puts the cars outside and does some work and then puts the vehicles back in, but it will not be a workshop. (Mr. Russell said that he misstated the workshop being in the garage before).

Mr. Femia then informed Mr. Lemoine that, if the special permit is approved, he must complete and file a Declaration of Covenant and register it at the Registry of Deeds (he explained what it is). Mr. Rajeshkumar continued that he was not comfortable at this time voting without knowing if the 10 percent of the total area was of the total living area, and asked the board if, with respect to previous accessory apartments, the total living area was looked at? Mr. Femia responded that the bylaw states “original structure”, meaning all livable space. Mr. Feland then noted that there will be a separate structure attached by a breezeway to the original structure, and asked if the breezeway would be considered an addition? He also asked if the accessory apt. can be a separate structure from the main house? In response to Mr. Feland, Mr. Tignor explained that there cannot be two separate living areas on the same lot, so the addition must be attached through a foundation because the foundation defines the structure. In response to Mr. Feland, Mr. Tignor replied that the breezeway is going to have a complete foundation, four-feet deep, to code, and noted that the breezeway on any house is part of the foundation. Mr. Wyatt commented that he was thinking about other builders in town and asked how they might use this example? Mr. Russell explained to Mr. Wyatt that this is the reason for the provision in the bylaws that the special permit for the accessory apartment would not be transferable to another owner. Mr. Femia added that, in the bylaws under Sec. B (“purposes”), which provides for various types of housing to meet the needs of its residents, this section protects the stability of property values and the single-residence character of the neighborhood; Mr. Tignor noted that this is why any addition has to be attached. In response to Mr. Orciani, Mr. Tignor replied that he had not gone through the complete set of plans or did a code review at this point, as he was waiting to be sure the ZBA allows the special permit and rules that the request complies with the bylaws. (The board members then continued to discuss the issue of what figure the 10 percent area is taken from; the last similar petition that the ZBA ruled on was on Central Street (Drew), and the accessory apt. was above the main house itself, and below 700 square feet in area. Mr. Femia asserted that the board asked the Building Inspector to go out to the property and make sure that the situation met all the criteria of the bylaw, which it did). Mr. Tignor continued that the other accessory apartments approved were already within the existing structures, but in this case, the problem is that it is being added to the house, so there is a problem deciding what the 10 percent refers to. Mr. Russell maintained that he had stated this, that it is not just the square footage of rooms above the basement, but 10 percent of the entire structure, including the basement, and he opined that the Building Inspector’s explanation made it clear that it is not just 10 percent of the living area but of the entire structure.

(Mr. Rajeshkumar then asked the public present for any opinions, and there were none; he then asked the board for a motion to close the public hearing). Mr. Femia then made the motion to close the public hearing. Mr. Feland seconded. Mr. Rajeshkumar then took a roll call vote:

Mr. Orciani – “yes”

Mr. Feland – “yes”

Mr. Wyatt – “yew”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

The vote was 5 “yes”, 0 “no”, 0 “abstain; the public hearing was closed.

The board then deliberated. Mr. Rajeshkumar suggested the possibility of contacting Town Counsel regarding how to interpret the 10% question. Mr. Femia discussed what the board previously did for 100 Goodale St., describing that one would go into a breezeway, to the left was a door to the house, and to the right were stairs to the accessory apt.; from the deck, the stairs lead outside. Mr. Rajeshkumar thought that Mr. Lemoine’s situation was different, in that in this case the house is being made bigger. Mr. Femia responded that they voted on what was there at the time, and noted that the breezeway in this case will attach to everything, there will be a roof but no walls, and reiterated the assertion that the bylaw mentions the “original structure” (Mr. Tignor reiterated that, to his knowledge, the original structure was not modified). The board members agreed that they could make a decision this evening and did not need to consult Town Counsel, but that there probably needs to be work on the wording of the bylaw.

With no further comments from the board, Mr. Femia made a motion to approve the special permit for accessory apartment within the attached garage of a single-family home at 107 Newton Street, West Boylston, MA, pursuant to Sections 3.2.B.6 and 3.4 of the West Boylston Zoning Bylaws. Mr. Feland seconded. Mr. Rajeshkumar took a roll call vote:

Mr. Orciani – “yes”

Mr. Feland – “yes”

Mr. Femia – “yes”

Mr. Wyatt – “yes”

Mr. Rajeshkumar – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain; the motion carried.

(Mr. Femia suggested to Mr. Rajeshkumar that, once the work is done, the Building Inspector notifies the board that all went well. Mr. Rajeshkumar informed Mr. Lemoine that he can obtain the Declaration of Covenant form from Ms. Goldstein. Mr. Femia added that it will be returned to the board after being stamped in the Registry of Deeds, and will be placed in Mr. Lemoine’s file).

NEXT ZBA MEETING: THURSDAY, MARCH 18, 2021, AT 7:00 P.M. – Mr. Rajeshkumar noted that the continued public hearing for 24 Sterling Place is scheduled for that meeting.

With no further comments or items to discuss, Mr. Femia made a motion to adjourn the meeting at 8:20 p.m. Mr. Feland seconded. A roll call vote was taken:

Mr. Femia – “yes”

Mr. Orciani – “yes”

Mr. Feland – “yes”

Mr. Wyatt – “yes”

Mr. Rajeshkumar – “yes”

The vote was 5 “yes”, 0 “no” and 0 “abstain, therefore the meeting was adjourned at 8:20 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____

