



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

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, July 15, 2021/7:00 p.m./ <u>Pursuant to Chapter 20 of the Acts of 2021, this meeting/public hearing was conducted via remote means (Zoom). No in-person attendance of members of the public was permitted, and public participation in any public hearing conducted during this meeting was by remote means only.</u>
Members Present	Christopher Olson (Chair), Barur Rajeshkumar (Vice-Chair), Nathaniel Orciani (Clerk), John Benson, David Femia and Secretary Toby Goldstein
Members NOT Present	Andrew Feland and Mark Wyatt (Associate Members)
Invited Guests	N/A

Welcome – Call to Order **Time: 7:07 p.m. (by Mr.Olson)**

Approval of Previous Minutes **Minutes of June 17, 2021**

Motion Originator: **Mr. Rajeshkumar**

Motion Seconded: **Mr. Orciani**

Treasurer – Financial Report **N/A**

Motion to Accept **N/A**

Seconded **N/A**

At 7:07 p.m., Mr. Olson called the meeting to order. Mr. Olson noted that there were (5) voting members (all full members) present; Mr. Feland was present and was told by Mr. Olson that he could make comments if he wanted to do so, but Mr. Feland chose to leave the meeting. (Ms. Goldstein and Mr. Olson asked the public to give their names and addresses for the record if they joined the meeting).

Minutes of June 17, 2021 Meeting:

After review of the draft minutes by the board, Mr. Rajeshkumar made a motion to approve the minutes as drafted. Mr. Orciani seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “abstain” (he was not present at this meeting)

Mr. Benson – “abstain” (not present at this meeting)

Mr. Olson – “yes”

The vote was 3 “yes”, 0 “no” and 2 “abstain”, therefore the minutes were approved as drafted.

Public Hearing, David G. Pare for Special Permit for the reduction of minimum lot frontage under Zoning Bylaw Section 4.2.C to allow for the lot at 14 Bowen Street, West Boylston, MA to be split into multiple lots, and which lot currently abuts Franklin and Prospect Streets:

(David Pare and Kathleen McGonagle represented). (Mr. Femia read aloud the public hearing notice). (Mr. Olson read aloud Governor Baker’s statement regarding remote meetings). Mr. Olson explained the public hearing process to those who attended the meeting; the board would allow the petitioners to discuss their request and give any relevant information while the board could ask any questions they might have, the Building Inspector (George Tignor) would have an opportunity to speak then the public hearing would be open to public comment. Mr. Pare began by discussing his special permit request. He explained that he would like the special permit to allow a limited lot frontage below the minimum allowed in the bylaws (120 feet), as his property only has 116 feet of frontage. He said that his house has been there since 1932, and he did not believe that the shorter frontage has been a detriment to the Town. Mr. Pare noted that this was a larger parcel and they are in the process of subdividing the property, and that technically the frontage is on Franklin and Prospect Streets. He added that there are several houses in the neighborhood with frontages below 120 feet and opined that he could not see any detriment to the Town by his proposed work.

(Mr. Olson then put up on the screen the plan submitted by Mr. Pare). Mr. Olson first verified, where they are focusing on where Bowen and Franklin Streets intersect, it is showing the lot as intended to be subdivided into 3, the existing lot which contains the existing house and the other areas abutting Prospect and Franklin Streets. Given the house in front is on Bowen Street, he asked if the access/driveway to the house always been by Bowen Street since it was built? Mr. Pare replied “yes”. In response to Mr. Olson, Mr. Pare replied that trees and undergrowth are currently on the two other lots (he verified with Mr. Olson that they are undeveloped, natural wooded areas); he noted that he did clear some trees from the lot that is off of Franklin Street, but there are no structures on it and there is a dirt drive up the side. In response to a comment from Mr. Olson regarding the size of the current existing lot which contains all three portions shown, Mr. Pare agreed that it is over 3 acres, that it originally was 3.25 acres, and each proposed lot will be approximately 1 acre (the lots on Prospect and Franklin Streets) but the parcel with the house will be 1.25 acres. Mr. Olson verified that, existing on the lot closest to Bowen Street, are the house, driveway, garage (at the end of the driveway) and barn in the back before the lot line

that they would like to draw. (One resident claimed that the barn was renovated into a house; Mr. Olson instructed him to wait until public comment is given later).

(Mr. Olson asked for comments from the board). Mr. Femia asked Mr. Olson to look at the first page of the petition filing, and he commented that he was confused as the petition noted that there is mention of building a single-family house on Prospect Street and he noted that Mr. Tignor's Zoning Interpretation Form mentioned the 116-foot frontage on Bowen Street and there not being 120 feet; he asked if the front page should have been about 14 Bowen Street rather than a proposed house on Prospect Street? Mr. Olson acknowledged that he saw that, and verified with Mr. Pare that he wants to subdivide the 3+ acre property so that, in the future, he can build one house on each lot (the lots on Franklin and Prospect Streets). Mr. Femia asked if the division of the large lot shouldn't have been done first before Mr. Pare came before the ZBA, as the board was not really concerned with the other two lots but with the property on Bowen Street? Mr. Olson responded that the existing property of 3+ acres is on Bowen Street, but the applicant wants to subdivide it to obtain 3 lots, but before he can do that he does not have 120 feet of frontage on Bowen Street. He needs to obtain a special permit for that before he can do that, and noted that the ZBA has done that before. Mr. Rajeshkumar then explained that it was part of public record that an ANR was done before Planning Board; he explained that he wanted to say that this evening because he asserted that it cleared up the issue and that the property was not just one lot. Mr. Pare added that this is why they are there this evening. (Mr. Olson asked Mr. Pare to describe his appearance before Planning Board). Mr. Pare explained that the original plan was drawn as one lot, split into 3; he went before Planning Board, who he claimed said that they could not issue anything without a special permit from ZBA to allow for the four less feet of frontage, or they cannot split up the lot. Mr. Olson responded, explaining that, in the 1930's, there were no frontage requirements; in the 1940's and 1950's, the bylaw was added stating that one would need 120 feet of minimum frontage, which is four feet more than what is there, on Bowen Street where they always had access to the house. Now, they are relying on 116 feet for frontage on the lot. Before this was not an issue as Mr. Pare could have used Franklin and Prospect Streets but it is an issue now because of wanting to subdivide the lot. He noted that, according to bylaw Sec. 4.2C, the ZBA has the authority to decrease the minimum frontage to 100 feet (but Mr. Pare only wants to decrease it to 116 feet), and said that it made sense to him. Mr. Rajeshkumar responded to Mr. Olson that the ANR was done, noting that this is in the minutes of 6/16/21, and stated that it was not recorded yet but wanted it said for the record that the entire lot is divided into two. He emphasized that he was stating this for the record, not to give Mr. Pare an advantage, and asserted that they cannot call the property in question one single lot; he said that Planning Board endorsed it and approved it, recorded or not. Mr. Olson asked when this would take effect? Mr. Pare said that it was his understanding that it takes effect when it is recorded, and Mr. Rajeshkumar said that he did not know when it takes effect. (Mr. Olson opined that he was not sure if it matters to what they are doing this evening, but appreciated the clarification and did not think that there was any issue with that.).

(Mr. Femia then returned to his previous question regarding the first page of the petition paperwork). Mr. Femia commented again that the first page of the petition mentions the proposed building of a house on Prospect Street, but nothing is said about Bowen Street and the frontage issue and he gave ideas of what should have been stated on that page. He discussed that fact that the house was built in 1932 and the two abutting houses in 1900 and 1906, and noted that 116 feet of frontage has always been on the property, and asked why Mr. Pare has to come before the ZBA? Mr. Olson responded that the frontage does not conform with current requirements. Mr. Femia asserted that the property is grandfathered since he cannot make it conform. Mr. Rajeshkumar asked if changes are to be made to the property, does the grandfathering go away? Mr. Femia opined that there need to be clear rules, because he did not think a special permit was needed as the frontage cannot be changed. Mr. Olson responded that he agreed in one sense, but now since the owner wants to subdivide the land it needs to conform. Mr. Benson continued that in the past the board dealt with the grandfathering issue, and if a current nonconforming lot changes in some manner, the grandfathering goes away.

He compared this to a house not being up to code, but if changes are made, it needs to conform as the benefit of grandfathering goes away. Mr. Femia responded that he had no problem with the 116 feet, but reiterated that it has always been there since 1932 and there is no way to get the extra four feet so he thought that it does apply; he also reiterated that there has to be a clear definition of grandfathering. Mr. Rajeshkumar disagreed with Mr. Femia, noting that the board acted earlier in many situations and asserting that as soon as changes are made to the lot, the grandfathering goes away; he opined that Mr. Pare is doing the right thing by seeking a special permit from the ZBA.

Mr. Femia then asked Mr. Pare a question regarding there being a drive on the Franklin St. property that runs into the Bowen St. property? Mr. Pare explained that it goes to the barn but not the house, and has been there since the barn was built for access. In response to a question from Mr. Femia regarding the ANR, Mr. Pare replied that he has not yet recorded the ANR because the builder wants to be able to get a building permit, and that process is going on now; he explained that, for some reason, the plans are not ready for the Building Inspector, and he did not record the ANR for Lot 3 yet because they assumed they would obtain the okay sooner for Lot 2 (the Franklin Street lot) because of the shortage of frontage on Bowen Street.

(Mr. Olson then asked Mr. Tignor for any comments or building permit issues). Mr. Tignor said that Mr. Pare was correct, and explained he has a building permit now and went over the drawings today, but he has not completed the code compliance on to these drawings yet, but said that they should be okay and he will be approving a building permit shortly. He did have a couple of questions for the builder and he is providing him with the answers. In response to Mr. Rajeshkumar, Mr. Tignor replied that only one of the two lots has a building permit, the lot with the dirt driveway access road (on the corner of Franklin and Prospect Streets)(Mr. Olson pointed that out on the map). He also responded to Mr. Rajeshkumar that there are enough setbacks all around, and that it is a single-family building area. In response to Mr. Femia, Mr. Tignor replied that the driveway to the barn was just a dirt access road when they were building the barn and has no effect on anything, and added that it would have to be redone to be a standard driveway. He said that it was his understanding that this road is only for access to that lot. Mr. Pare added that the only way to reach the barn, which they do now, is to go from the far side of the garage, and opined that they will probably have egress from the left side of the garage meet up with the top of the other driveway, coming from Franklin Street. Mr. Rajeshkumar asked if the lot is split and sold, how would the driveway be used to go to the barn? Mr. Pare replied that it will be sealed off and there will be no egress there and one would go through Bowen Street. Mr. Femia then asked Mr. Olson to bring up the petition on the screen, where it only mentions building a single-family house on Prospect Street, and reiterated that there is no building permit for it, only for Franklin Street, but the petition is asking to build a house on Prospect Street and mentions the Bowen Street frontage. Mr. Olson opined that this was a fair point. Mr. Femia continued that Prospect Street has 180 feet of frontage. Mr. Olson asked Mr. Pare if this could have been an oversight? Mr. Pare replied that he was not sure about filling out the forms and opined that he did the best he could. In response to Mr. Rajeshkumar, Mr. Olson replied that there should be a note in the minutes about how the petition is filled out, and it is an important point that this meeting is advertised as being relevant to 14 Bowen Street, and both Prospect and Franklin Streets are mentioned. But he opined that the intent was clear enough here to satisfy minimum legal requirements. Mr. Pare added that, at this particular point in time, it does say Prospect Street so it is not totally incorrect, and that he wants to get a special permit for this side of that particular lot (the petition was up on the screen). Mr. Olson responded that he thought that this was clear. (Mr. Tignor commented that he did not oppose the proposal at all).

Mr. Pare gave one last comment, that he opined that there was a precedent to allow something like this, not knowing exactly the date that a special permit was granted for something like this. Mr. Olson then commented that he recalled lots like this, and asserted that it was not an atypical request, and he had no real concern so far as the nature of the request. Mr. Benson then said he wanted to comment. He noted that this type of request comes regularly to the ZBA, but this is distinguished from them because usually the request is to divide

the lot, decrease frontage, and create a second access point on the same street. He asserted that it is usually not supported where the applicant creates a second access point on the same street. He opined that this could change the character of the neighborhood. He described that, usually, they have a conforming lot with a certain amount of frontage and the neighbors have conforming lots with frontage, then one person seeks two lots, one or both nonconforming and treats them differently from the neighbors. Mr. Benson asserted that this is not the same situation, where the newly-created lots won't access from Bowen Street; they are not asking to add an access point to a lot on Bowen Street. He wanted it on the record that this situation was distinguished from what is usually dealt with when frontage is decreased.

(With no further comments by the board or Mr. Tignor, Mr. Olson opened the hearing to public comment. He instructed members of the public to give their names and addresses, and direct their comments to him). First to speak was Matthew Bedell, 129 Prospect Street. He claimed that the barn is fully renovated and is a dwelling, and assumed with building permits, and asked how it can be said that it does not need a driveway unless it comes off of Bowen Street leading to it? He claimed that it is now not a barn, but a residence. Mr. Benson asked Mr. Tignor if someone is living there, and if it is approved by the Town as a dwelling, properly permitted with an address? Mr. Tignor responded that, as far as he knew, no one lives there, and explained that the owner did take permits to use it as a workshop with a wood stove for heating, but there is no occupancy permit. Ms. McGonagle replied that no one is living there and that it is only recreational and another place to go (especially during the pandemic), there is no running water or bathroom, and replied to Mr. Olson that there are no future plans to live there. Mr. Olson responded that, being in the single-residence district, the bylaws only allow one residence per lot, but even though it had been permitted for a workshop, it appears that there are no residential purposes moving forward. Ms. McGonagle added that Mr. Tignor told them this when they pulled a permit for the barn and it was very clear. Mr. Bedell insisted that there were people staying in there during the pandemic, but Ms. McGonagle responded that the "people" were only herself and her husband and children, and asserted that no one slept in there or stayed overnight in there. Mr. Bedell claimed that they were in there at 2 a.m., and that it seemed like it was used as a dwelling and that there was a change to how the barn was used. Mr. Olson agreed that this was a fair point, and said that, going forward, it seemed as though they have no intention of residing there, and he noted that a single-residence district only allows one residence on the property. He noted that this would be a zoning issue if it is done in the future, and it can be monitored. Mr. Benson then asked Mr. Tignor, when the lots are subdivided, will the barn continue to meet all setback requirements? Mr. Tignor replied, from what he saw on paper, it would do so. Mr. Olson added that the rear setback in the single-residence district has to be 10-feet off the lot line. Also, he said that it is in the ZBA's purview to look at compliance with minimum setbacks. Mr. Rajeshkumar added that Planning Board also looked at setbacks before issuing the ANR and asserted that this would be another checkpoint, even if they do not make a decision this evening. To clarify, Mr. Pare explained that the rear and side setbacks are 10 feet, and the barn is 20 feet from the property line. (Mr. Orciani noted that it is 15.3 feet on the plan; Mr. Pare responded that it is past 10 feet and added that they were aware of that when they split the lot). Mr. Olson said that 15.3 feet from the barn to the new lot line does comply and will not be an issue). (Ms. Goldstein then brought up an opinion letter from a resident, Joanne Ciesluk, who lives on Newton Street, that came by email; Mr. Olson read it into the record, and it will be kept in the file. She opined that the minimum frontage instructed in the bylaws was established in West Boylston for good reasons and they should abide by it, and she opined that allowing less than the minimum frontage will increase traffic safety issues at the intersection of Franklin and Prospect Streets).

Next to speak was David Corcoran, 16 Henry Street. He asked Mr. Olson to ask Mr. Tignor what the square footage is of the single-family residence? Mr. Tignor guessed, as he did not have the information in front of him, that the two-story colonial with attached garage is probably 1,500 to 2,000 square feet. In response to a question from Mr. Corcoran about the setbacks on Lot 2, Mr. Tignor replied that he did not have the drawings with him, but that would be one of the things to go over on the plans and that he is still waiting for; but if the proposed

work is too close to any of the lot lines, he'll make sure that is known. He replied to Mr. Corcoran that he had not issued a building permit yet, as he needed more information on the plans. Mr. Corcoran also asserted that water comes down through that property, and he asked Mr. Olson if there will be any issue with drainage? Mr. Olson replied that Mr. Pare also appeared before the Conservation Commission, who he explained had jurisdiction over those kinds of issues, and commented that the applicant had some success before them; Mr. Benson referred to an opinion letter from the Commission, noting that they had no issues with the project and that the Chair actually supports it. Mr. Femia added that Mr. Benson was correct about this, and added that the Commission requires a meeting with DCR before building to explain what restrictions are on the wetlands, as there is some watershed on the lots; he asserted that the water running issue will be addressed by the Commission before the applicant builds.

With no further public comments or questions, Mr. Femia made a motion to close the public hearing. Mr. Orciani seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “yes”

Mr. Benson – “yes” – TO MS. GOLDSTEIN: MR. BENSON

WANTS HIS COMMENTS IN THE MINUTES THAT THIS SPECIAL PERMIT REQUEST IS DISTINGUISHABLE FROM OTHER INSTANCES WHERE PROPERTY OWNERS SOUGHT TO REDUCE FRONTAGE ON A PARTICULAR ROAD. He explained that this does not put conditions on his vote, he just wanted to have it be clear in the minutes in case the ZBA receives another request to reduce frontage and the applicant tries to cite this example. (This was discussed in more depth on page 3).

Mr. Olson – “yes”

The vote was 5 “yes” to 0 “no”, therefore the public hearing was closed, and no more comments taken from the public.

(The board then deliberated). Mr. Femia commented that he had no issue with the request, and he agreed with Mr. Benson and was glad that the aforementioned provision was made by him in case this comes up again. Mr. Benson reiterated that this situation is different from other instances where there is a decrease in frontage to allow two lots to have access from the same road. Mr. Rajeshkumar commented that the applicant is splitting the property into three lots; he must go before DCR, and was already before the Conservation Commission, whose responsibility it was to look at how the building will affect the wetlands, and he is okay with that. Mr. Olson agreed with Mr. Rajeshkumar's comments about existence of wetlands and that the Concomm and DCR are involved and opined that Mr. Pare seemed to be on his way through that process and that this is reassuring. He mentioned that Mr. Benson made the distinction between other special permit/frontage cases for the record. Also, Mr. Olson wanted to note that the newly-proposed lots, one on Prospect Street, with 180-feet of frontage, and 2 and 3 with frontage on Prospect and Franklin Streets and Franklin Street alone have greater than 180 feet of frontage, so the two new lots have more than the minimum required frontage for this zoning district. He did not see any issue with it. Regarding access to the existing house on Bowen Street, he does not see the proposal as impacting access to the existing house or garage in any way. He explained that the bylaws require the board to look at this and he believes that they have done that sufficiently.

With no further discussion by the board, Mr. Rajeshkumar made a motion to approve the special permit for 14 Bowen Street for reduced frontage to 116 feet. Mr. Femia seconded. Mr. Olson took a roll call vote (he informed all present that a supermajority vote of 4 “yes” votes was needed to grant the special permit):

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 5 “yes” to 0 “no”, therefore the motion was approved. Mr. Olson informed Mr. Pare and Ms. McGonagle that the written decision is due within 14 days, to be given to the Town Clerk, then there will be an appeal period of 20 days and the Town Clerk will issue a document for “no appeal”, and the applicants will need these documents to be registered along with the ANR. Mr. Olson also instructed the board that Ms. Goldstein will leave the vote sheet in the ZBA mailbox for them to sign next week.

Treasurer’s/Financial Report: Mr. Olson reviewed the report; it was not discussed at the meeting.

Mail and/or Paperwork: There was none to discuss.

Next ZBA Meeting: The next ZBA meeting will be held on **Thursday, August 19, 2021**, at 7:00 p.m., and this will be a remote meeting; Mr. Olson told the board that there will be two public hearings that evening.

With no further discussion taking place, Mr. Femia made a motion to adjourn the meeting at 8:23 p.m. Mr. Orciani seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Femia – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

The vote was 5 “yes” to 0 “no”, therefore the meeting was adjourned at 8:23 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____

