



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

[Zoning Board of Appeals] Meeting Minutes

| | |
|--|--|
| Date / Time / Location of Meeting | Thursday, October 15, 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> |
| Members Present | Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), John Benson, Nathaniel Orciani and Secretary Toby Goldstein |
| Members NOT Present | Andrew Feland, Mark Wyatt and Charles Witkus (all Associate Members) |
| Invited Guests | N/A |

Welcome – Call to Order Time: 7:02 p.m. (by Mr. Olson)

Approval of Previous Minutes Minutes of September 17, 2020 – Continued to November 19 Meeting

Motion Originator N/A

Motion Seconded N/A

Treasurer – Financial Report N/A

Motion to Accept N/A

Seconded N/A

At 7:02 pm, Mr. Olson called the meeting to order. Mr. Olson then read aloud Governor Baker's statement regarding remote meetings, which was posted on the agenda, and reminded everyone that instructions for joining the Zoom meeting were posted on the agenda 48 hours in advance of the meeting.

Minutes of September 17, 2020 Meeting:

Mr. Olson told the board and those present that these minutes were continued to the November 19, 2020 meeting.

Other Business:

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports:

Ms. Goldstein reminded the board of vote sheets in the ZBA mailbox that needed signatures, along with ones that may need signatures from this evening. Mr. Olson responded that the board will follow-up on that after the meeting.

Next Scheduled ZBA Meeting – THURSDAY, NOVEMBER 19, 2020

Continued Public Hearing, Pincroft Development, Inc., Petition for Administrative Appeal, 241 Woodland Street:

(Continued again from the continued public hearing on September 17, 2020). (Atty. George Kiritsy represented). Mr. Olson began by explaining that the hearing at the September meeting left off with Mr. Kiritsy agreeing to send a memo to the board with cases that he had cited at the meeting (he did send that to the board shortly after the meeting). After that, Mr. Olson reached out to Town Counsel. Mr. Olson went through the Town Administrator, Nancy Lucier, and this time, instead of an email opinion from Town Counsel, they were instructed to call her; this explained why there was no email information from Town Counsel about this, so Mr. Olson said that he would go through that briefly this evening. Before doing that, Mr. Olson informed those present that only this afternoon he received a letter with comments from residents, Christopher and Madeline Stamas, of 243 Woodland Street, pertaining to this Administrative Appeal. He summarized it by saying that, essentially, the letter was against the appeal for a number of reasons, including proposed use, size of the building, and placement and configuration of the buildings, and he wanted to acknowledge that before beginning the discussion. Mr. Olson said that he forwarded the memo sent by Mr. Kiritsy to the board several weeks ago, and thanked Mr. Kiritsy for sending it; he also sent it to Town Counsel for feedback. Mr. Olson continued, that he had the phone call with Town Counsel after that and first, they looked at the case law cited in the memo, and especially focused on the Tofias case. Mr. Olson summarized that the Tofias case was another case involving a split lot, with two different zoning districts; Town Counsel agreed that there were similarities between the two zoning bylaws that were involved for that town and West Boylston. But, while the split lot bylaws were similar, Town Counsel opined that there was a difference in the underlying zoning issue that was being dealt with. They explained that, with Tofias, the lot was split between the business district and residential district but the underlying bylaw that was being applied was the concept of lot coverage or the footprint. They explained that the building on the lot cannot be greater than 20% of the total ground area of the lot, and that was the underlying issue that the court was dealing with in that case. The 20% limit was the same in both districts, which was not the case in the present situation and therefore the Tofias case was not on point with the Pincroft Development case as the underlying zoning issue was not the same. Here, multi-family use is allowed in the business district but not in the residential. Town Counsel's opinion was that they believed that no single case law compelled the board to find one way or another, so Town Counsel reverted back to looking at and interpreting our town's bylaws. They focused on Sec. 4.3.A of the Town's zoning bylaws, which specifically discusses multi-family use on a lot and its limitations, which are distinct from other allowed uses in the town. For example, there are different limitations such as for density such as that in multi-family use every unit built requires 10,000 square ft. of land to justify the multi-family use. Also, Sec. 4.3A pre-supposes that multi-family use is allowed, but it does not talk about split lots. This differs from regular dimensional requirements. So, in this case, the intensity of use potentially increased by relying on land that prohibits multi-family use. Town Counsel concluded, regarding Section 4.3A, that it can't be used to overrule a

prohibition of multi-family use in a single-residence zone, and also cannot be used as a basis to justify more units on the business portion of the lot. So, with respect to case law and interpretation of the West Boylston zoning bylaws, those were the two issues upon which Town Counsel provided input.

Mr. Olson then asked for questions or comments from the board. In response to Mr. Femia, Mr. Olson replied that in order for the petitioner to build four units, he needs to have greater than 40,000 square feet of land in either the business district or with the additional 30 feet in the residential district. Mr. Olson then asked for comments from the petitioner or Mr. Kiritsy. Mr. Kiritsy asserted that Town Counsel made a distinction between lot coverage, which was the underlying issue in the Tofias case, and density, the underlying issue in the present case. He asserted that the courts ruled that lot coverage and density are no less dimensional, and the entire lot is counted for either one. He asserted that this opinion was not supported by cases before or after Tofias, and mentioned the Goldlust case, which talked about this and used the boundary line to determine set back. But he noted that Sec. 4.3A talks about businesses and industrial uses bordered by residential use. He opined that West Boylston bylaw defines this proposed four-unit building as a residential use in the district; the Goldlust case measured from the boundary line as the area as it was a unique case (this was discussed in the decision, which is on file), but before and after Tofias, he asserted that one looks at the lot as a whole. Mr. Kiritsy opined that West Boylston bylaw allows them to use 30-feet into the residential district and count the entire lot for dimensional purposes, including density, and asserted that the courts do not look at density as any less dimensional than frontage, and opined that nothing in the bylaws says that density has to be within the district and that this use is allowed, that no zoning relief is requested regarding this, and that it is a rightful use.

Mr. Olson clarified, that Town Counsel opined that Sec. 4.3A contained more than dimensional requirements, but also included a use component, and specifically related to multi-family use, where other uses in town do not have the same requirements; while multi-family use is allowed in the business district, it is not allowed in the single-residence district and the issue is how is the bylaw applied in a split lot situation where one district allows the use and the other prohibits it. Mr. Kiritsy responded, opining that they must look at the entire lot for dimensional purposes, but look at the zone for use, and that lot density is not use, but is dimensional like frontage. Mr. Femia verified with Mr. Olson, that according to Town Counsel, regarding Sec. 4.3A, the owner must have 10,000 square feet per unit, or 40,000 square feet for four units, including the 30-foot extension; but the whole lot cannot be used for that density. Mr. Olson responded, asserting that Town Counsel opined that the front half of the lot, which includes part of the business district, and the 30-foot extension into the residential district can be used, but entire lot cannot be used. He explained that half of the lot is over 20,000 square feet, so he suggested that perhaps two units would be allowed. He asked Mr. Kiritsy, if they take the front part of the lot plus the 30-foot extension, will there still be 40,000 square feet? Mr. Kiritsy replied that there would be about half, or greater than 20,000 square feet (which would only allow two units to be built, as stated by Mr. Femia). Mr. Kiritsy responded, that this is Town Counsel's opinion, but he asserted that the bylaw considers it a lot, they don't measure the distance between districts, that this opinion has no support in case law, and that the courts have always said this so the owner has full access to his property. In response to Mr. Femia, Mr. Olson replied that Town Counsel opined that there was no controlling case law and nothing on point to this situation, and that the board would have to interpret the meaning of the bylaw, and that was Town Counsel's interpretation of the bylaw. He reminded everyone that this was an Administrative Appeal because the Building Inspector denied a building permit based on two reasons, which the board discussed at the previous meetings, along with how Sec. 4.3A is involved with this situation. Mr. Olson explained that, from all the arguments, case law, and multiple opinions from Town Counsel, his position was, even though he did not agree with the Building Inspector's reasoning for his original decision to deny the building permit due to active use and if the multi-family is allowed to be built within the 30-foot extension, he did agree with the decision to deny based on Sec. 4.3A and requirements for use and dimension that it incorporates. Mr. Femia opined that it made more sense to him now, and because the petitioner would not have the 40,000 square feet to build upon, agreed with the building Inspector's decision to deny the

building permit for four units. Mr. Rajeshkumar opined that the board should close the public hearing as, after three meetings, the board has looked at all the information unless there is anything new from the board or the public. There were no comments or questions from the public or the board, but Mr. Kiritsy asked the board to file the final decision within the time frame that he requested by letter which is on file (by October 25), and explained that they (the petitioner) may appeal this decision, but wanted it to be because of substance, not procedure. Mr. Kiritsy reiterated, for the record, that his letter agreed to extend the continuation of the public hearing to October 15 (this evening), with the deadline for final action to be October 25, 2020.

With no further comments, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Femia seconded. Mr. Olson took a roll call vote, as follows:

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Olson – “yes”

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

(The board then deliberated). Mr. Olson explained to Mr. Femia that the motion would be to deny the appeal of the Building Inspector’s decision, which would be a “no” vote, and that would uphold his decision. But, he explained, that the reasoning would be different from the Building Inspector’s reasoning. Mr. Olson verified that the board members agreed with Town Counsel’s reasoning as opposed to the Building Inspector’s reasoning; there were no further questions or comments from the board about that. Mr. Kiritsy then asserted that statute requires that they state their reasons. Mr. Olson asked the board to express their opinions if they do not agree, and noted that their reasoning must be from all members of the board as well as the Chair and Town Counsel. Mr. Benson then asked Mr. Olson to state what he thought was the general basis of Town Counsel’s opinion that they would be adopting as it would be easier to frame the vote? Mr. Olson summarized, that Town Counsel’s opinion and the reasoning that the board was proposing to adopt that was consistent with their opinion was that there was no case that was directly on point with the present situation, given the specific facts of this petition. Second, they opined that fair reading of two bylaws (the split lot bylaw and Sec. 4.3A, in combination) stands for the fact that there are both use and dimensional requirement aspects in Sec. 4.3A, so, to justify four multi-family units, there needs to be 40,000 square feet in the zone allowing the multi-family use plus the 30-foot extension into the more restrictive zone. Mr. Benson surmised that the appeal should be denied because the intended use will not have 40,000 square feet in the business district (Mr. Olson added, and in the 30-foot extension of the single-residence zone included with that). He explained that Town Counsel, contrary to the Building Inspector, believed that they could build a portion in the 30-foot zone. In response to Mr. Benson, Mr. Olson replied the desired use would be allowed in the business district and, according to Sec. 2.4, in up to 30-feet of the residential district, and explained that when the total area in the business district and 30-foot zone are added up, it does not add up to the 40,000 square feet required in Sec. 4.3A for four units. (The board then discussed the need for a supermajority vote in agreement (four members) to grant the appeal and that a “yes” vote approves the appeal, and a “no” vote would uphold the Building Inspector’s denial). (There was a short pause in the proceedings, as Mr. Femia had technical issues, but no discussion took place until he returned).

With no further questions from the board members, Mr. Olson asked for a motion to approve the Administrative Appeal at 241 Woodland Street? Mr. Femia made the motion; Mr. Rajeshkumar seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “no”

Mr. Orciani – “no”

Mr. Benson – “no”

Mr. Femia – “no”

Mr. Olson – “no”

The vote was 0 “yes”, five “no”, and 0 “abstain”; therefore, the Administrative Appeal was denied. (Mr. Olson thanked Mr. Kiritsy for his work).

Public Hearing, Wallace E. Baldarelli, Jr., Administrative Appeal, 301 Sterling Street:

(Atty. Thomas Falwell represented). Mr. Femia first read aloud the public hearing notice. Mr. Olson then explained the public hearing procedure, allowing the petitioner to make his case, taking questions from the board, and then taking questions and comments from the public. Mr. Olson then asked Mr. Falwell to speak. Mr. Falwell requested a continuance of the public hearing to the next meeting (November 19, 2020). He explained that he received, late in the afternoon (after 4:00 p.m., but Ms. Goldstein sent it to him at 2:30, as soon as she received it), a lengthy memo from Baldarelli Brothers, Inc. in opposition to the appeal, and he felt that he had no time to discuss it with his client and “digest” it. Mr. Olson responded that he understood, as he also received it late and could not read over the material, and he was willing to ask the board to make a motion to continue. Mr. Olson did mention that an issue was the timing of the public hearing, explaining that, since it was an administrative appeal, there is similar timing to a variance; it must take place within 100 days from filing, so he explained that the petitioner would have this evening and the November 19 meeting if he needs two sessions. He asked Mr. Falwell if he would be willing to agree to continue to the December 17 meeting if needed? Mr. Falwell said “yes”. Mr. Benson suggested that the petitioner agree to extend the deadline for a written decision to December 22 and Mr. Falwell agreed. Mr. Benson then moved to continue the public hearing to November 19, 2020, with the understanding that the petitioner agree to extend the deadline of the decision to December 22, 2020 to be filed with the Town Clerk. Mr. Femia seconded. Mr. Femia then asked, as the board received comments from Planning Board and Conservation Commission, do these boards need additional information to review? Mr. Olson replied, as they are advisory opinions, that is not required, and he noted that the aforementioned new information went out to those boards today as well. Mr. Olson then took a roll call vote to continue:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson - “yes”

Mr. Femia – “yes”

Mr. Olson – “yes”

Mr. Olson noted that the public will be able to comment next time.

Public Hearing, Glenn Sciarro, 24 Sterling Place, Petition for Special Permit:

(Atty. Theodore Barone, David Dye and Glenn Sciarro represented). (Mr. Femia read aloud the public hearing notice). (Mr. Olson then reiterated the public hearing procedure for those now present). Atty. Theodore Barone thanked the board and stated that he was there to present the petitioner’s position, along with his colleague, David Dye. He explained that, last year, Mr. Dye and paralegal/private investigator Doreen McCormick from his office interviewed family members, the Bouchers, who lived at that address from 1963 to 2008, and they told them that the property was set off into four separate apartments and that individuals lived there throughout that time. They described that they lived in one unit with their three children, and there were family members of basically one other family occupying the three other units; they asserted that there were always four units. He continued that Mr. Sciarro purchased the property in 2013 from Ms. Bath and Ms. Lucier, and asserted that it was also split up into four units. He asserted that the units are substantially the same size. Mr. Barone mentioned opinions received from the various Town boards; the Conservation Commission found no jurisdictional problems with the application, Board of Health had no issues as the property was connected to sewer, but Planning Board addressed the situation and had issues. First, they asserted that the petitioner needed two more parking spaces per multi-family unit; their concern was depicted by a 2019 aerial photo in which there were not adequate parking

spaces or access lanes to comply with the Town's minimum standards. Mr. Dye (who was construction supervisor and a consultant and Mr. Barone described his qualifications), referred to a copy of the plot plan and three photos. He pointed out that there were two photos of the side yard next to the building, one taken from the street, down the side yard, and towards the back of the building, and the second was taken from the back of the property up to the street. He explained that these photos show how much space there is with respect to that side yard area. He explained that the plot plan shows that the side yard contains 150 feet, said that Mr. Dye told him that regulations regarding parking require at least 18-feet per parking space, so that they would have room for 6.8 spaces using 22 feet per space. He said that Mr. Sciarro proposes five parking spaces and one turnaround in that area so that people would not have to back out into the street. He continued that the back area is 94 feet according to the plot plan, with a minimum of 18 feet per space, and using 20 feet per space, there could be 4.7, and Mr. Sciarro proposes three spaces in the back. He explained that the original MLS listing had eight off street spaces, so he asserted there should be ample room for eight spaces and egress/ingress. He also mentioned the Planning Board comment that there would be an increase in runoff volume, but Mr. Barone explained that on the side and in the back the parking spaces will not be asphalt but crushed stone after the property is leveled, so that the runoff should not increase. So, Mr. Barone opined that both areas of concern had been adequately addressed, and he discussed who Mr. Sciarro chose to do this work to ensure that these concerns will be met, and asked the board and public if they had any questions?

(At Mr. Rajeshkumar's suggestion, the photos were put up for the participants to see). Mr. Barone stated that a condition of the permit should be satisfaction of the issues previously mentioned; Mr. Rajeshkumar agreed. In response to Mr. Rajeshkumar, Mr. Barone explained that one photo was of the back of the building, and he explained that there would only be three cars back there on the 94-foot length. In response to Mr. Rajeshkumar, Mr. Barone replied that none of it is paved yet. In response to Mr. Orciani, Mr. Barone pointed out that two cars would park along the fence line, and one would be where it is now shown (on the photo presented), only further back. He explained that the dumpster would be by the front of the street. He also explained that the area towards the pole would be where the turnaround would be. In another photo, Mr. Barone explained that they propose parking along the four-foot fence to the left of the picture and will regrade the whole area. He noted that there is basically crushed stone driveway there now with quite a bit of sand.

In response to Mr. Olson, Mr. Barone responded that the chain link fence would be four-feet high, and he asserted that they are usually six inches from the property line. Mr. Olson verified with him that the parking would not be within 10 feet of the lot line; Mr. Barone explained that the parking would be against the building. Mr. Olson added that they cannot have a right of way within ten feet of the property line; Mr. Barone opined that it looked as if there is a lot of room. Mr. Olson commented that, in order to form an opinion, the board would have to see a plan that shows the lot line and has the proper dimensions and where the parking spaces are, but with only these photos, they cannot tell where the setback ends or where the right-of-way begins or if the parking spaces protrude into the right-of-way and opined that the information given is not sufficient to make a decision. Mr. Barone suggested that the board give them the opportunity at a later meeting to supplement their presentation and provide an adequate plan that the board needs to address their concerns. In response to questions from Mr. Rajeshkumar regarding where the proposed parking would be located, Mr. Barone reiterated that they will provide the board with the type of plan that the board needs to address their concerns.

Mr. Olson then commented to Mr. Barone that he was surprised to hear his allegations that the home had historically been a four-unit multifamily dwelling. He then mentioned a letter from the Building Inspector which mentioned property cards from 2011 which listed three apartments there. He added that MLS listed the property as three units, not four, and that the Assessor's records from 2014 listed it as three-units and not four. Mr. Olson noted also that the petition alleged three existing units, not four. In response, Mr. Barone explained, based on their investigation, that they were indicating that there was a four apartment-type situation within that one structure, going back to 1963; he acknowledged that the documentation that Mr. Olson mentioned said that it is a

three-family structure in a multi-family situation, but he was making the point that Mr. Sciarro bought the building as it exists. He explained that there were twelve rooms in that particular structure, and asserted that their investigation showed the internal structure and layout had been that way since 1963, and that Mr. Sciarro bought it with that fourth unit even though the Town looked at it as a three-family. Mr. Olson wanted to verify that Mr. Barone acknowledged that, according to Town records and according to legally allowed use at the time, it was understood to be a three-unit multi-family home as opposed to a four-unit. Mr. Barone responded that he did not disagree with the Town's records but the caveat was that the physical plan of the inside of the building had the additional "unit", and that this is how the internal structure was at least since 1963, and he reiterated that Mr. Sciarro bought it in 2008 from the previous owners with that fourth unit as it is.

Mr. Barone replied to Mr. Femia that there is no one in the fourth apartment, and when Mr. Sciarro purchased the home there were four separate areas, but it were considered a three unit "situation" by the Town, with three families living there and the fourth unit being empty. He explained that Mr. Sciarro wanted to make the other area into a fourth livable unit where a fourth family could live.

In response to Mr. Femia, Mr. Barone replied that Mr. Sciarro has done very little work, if any, that he was aware of, and explained that, speaking with Mr. Dye who inspected the property within the past several months and with Mr. Sciarro, really nothing that he was aware of was done. In response to Mr. Rajeshkumar, Mr. Barone and Mr. Sciarro described what is in the "fourth unit"; there is one bedroom, one kitchen, one bath, and a small room which is a laundry, for each apartment.

Mr. Olson then asked George Tignor, Building Inspector for the Town, for any comments, knowledge or experience concerning any work done on the fourth unit. Mr. Tignor introduced himself and responded that any work was done before he became Building Inspector, but he had gone through the records and found several things. One thing was that the previous Building Inspector went to the site to inspect the building, and found work done on the fourth "apartment", some of it being substantial. He said the impression he had was that this was an illegal apartment being put together by Mr. Sciarro, without any permits or any inspections. Mr. Tignor himself looked into the International Building Code, and Mr. Tignor said that he did not see a second egress off the second floor, so he asserted that there are issues regarding building code. He said that he had not been inside, but from the outside, he opined that it would need work to make a fourth apartment, although since work had been done on the fourth unit without permits it was hard for Mr. Tignor to tell what was going on with the site. Mr. Tignor also commented that only three betterments had been paid for the apartments, which indicated that there were always only three apartments there.

Mr. Olson continued that there was something he wanted to discuss with the petitioner, showing those present the Town's zoning map; Mr. Olson noted, according to the zoning map, and in the petition, the lot is described as being in the single-residence zone. But Mr. Olson commented that it looked like a split lot situation, with the front in general residence, and the back in the single-residence zone, and noted that a multi-family structure is allowed in general residence only, not in single residence. He continued, referring to the lot on the GIS from the Town website, that one can see the front of the lot is in the general residence zone and the back in the single residence, and explained that the lot is about 1/3 acre in size, which was important because even if one assumes that a multi-family structure is allowed in the entire lot, to justify four units Mr. Sciarro would need 40,000 square feet, which he does not have. Mr. Barone responded, with respect to the concerns regarding size of the lot, that he would ask for the opportunity to address that at the same time as the setback issue and provide additional plans, as this was a technical question and he wanted further opportunity to address that. Mr. Olson responded, clarifying that, to go from three units to four, with a lot of less than 40,000 square feet of area according to Sec. 4.3A of the zoning bylaws, they would be requesting a special permit to extend the nonconformity from three to four units. But, he added, with Sec. 4.3A, his concern was that the ZBA can't provide relief by special permit, and that they need a variance as it does not comply with Sec. 4.3A of the zoning bylaws. Mr. Olson noted that the variance standard is high. Mr. Barone then reiterated that he would like to continue with

respect to these questions, and he explained that he understood what Mr. Olson said about a variance, but before he delves into the need for variance versus special permit, it was important to make sure the request would not alter the neighborhood or be detrimental or would only be a slight change, and he wants to provide adequate analysis and observations to address the issues. Mr. Olson suggested that they ask the board for any questions and concerns at this time so they would know what to address. (At this point, Mr. Sciarro interjected that he blamed the people from whom he bought the property for separating the land, putting it in this situation, and for building their house in single-residence; Mr. Barone asked him to wait for the board to ask their questions). Mr. Femia commented that the Building Inspector wrote, in 2018 when he went out to the property, that work was done without a building permit. Mr. Sciarro responded, asserting that it was not major work, and claimed that the Building Inspector did not let him finish pulling the permit. In response to a question from Mr. Femia, Mr. Sciarro replied that, when the Bouchers owned the property, there were four apartments, three plus an in-law apartment on the right; he explained that there was a set of stairs and a back egress, and the door was kept closed so everyone had separate apartments. Mr. Barone asserted that Mr. Boucher told Mr. Dye and Doreen McCormick that there were four separate units, all occupied; Mr. Boucher's family occupied one unit, and other family members occupied the other three. He clarified to Mr. Femia that one family occupied one apartment, and a large family with several members occupied the other three. Mr. Sciarro continued, that the Bouchers indicated that all the units had separate kitchens, hot water tanks, furnaces, heating units, baths, living rooms, and doors with locks, and other family members couldn't go into the other apartments; he asserted that this was not a boarding house situation, but four separate dwellings. In response to Mr. Femia, Mr. Sciarro said that he has four electrical panels at this time, and two water heaters, one split on the left and one split on the right, upstairs and downstairs, so there are two zones for each water heater, and noted that it takes \$600 per month all year round to heat the building for four units. Mr. Femia commented that he still had an issue with this situation, but wanted to proceed.

(Mr. Olson then asked for any public comments, and explained that, before someone speaks, he/she must state name and address). Mr. Tignor commented that he had no plans or drawings showing the so-called fourth apartment, or primary or secondary egresses. He reiterated that he had not been to the residence, and asserted that the past Building Inspectors who were in there did not say that the fourth apartment was legal. Mr. Tignor said that he needed a set of prints before proceeding to prove that everything is to code because, right now, he opined that he did not see anything to code. In response to Mr. Rajeshkumar, Mr. Tignor replied that he had been asked in the past to go out to sites, but that inspecting the building is not usually what he does; he explained that usually he goes out if the property is permitted, properly with drawings submitted with the scope of work, then he inspects each stage of construction until finished, including electrical, plumbing and everything going into the apartment. Mr. Sciarro interjected, explaining that the building permits were being pulled, but he fired the first electrician for stealing and the second one left with his money and did not pull the permit; he said that he turned him in to the Attorney General and the Town, claiming that the Town didn't see a problem with the electrician not pulling the permit, then he claimed that the next permit has been sitting in the Building Inspector's office for three years. Mr. Olson suggested that he would add one thing; he opined that egress and ingress the Town is compelled to look into with a special permit application, so in addition to plans for parking and lot size, he also wants to see that written materials properly authenticating ingress and egress comply with local and state laws. In response to a question from Mr. Sciarro, Mr. Tignor replied that they must go by the ninth edition of MA State Building Code and 215 International Building Code as the structure has four units. Mr. Femia added, because of concerns regarding the work done in 2018 with no permits, he would want to see the plan submitted to the Building Inspector and the board, and wants Mr. Tignor to go see what has been done and needs to be done, to be sure the plan meets code. Mr. Olson agreed with Mr. Femia, and wants Mr. Tignor's feedback before the board makes a decision as they are dealing with building code issues. Mr. Barone summarized areas of concern; one was the parking area and setback (Mr. Olson added traffic flow), another concern was the size of the lot regarding multi-family units, and the question of special permit versus variance (Mr. Olson added that it particularly pertains

to Sec. 4.3A of the bylaws), and third was work being in compliance with building code, especially ingress and egress (Mr. Olson agreed, noting that this was information that he believed that the Building Inspector would expect to see in this type of scenario). Mr. Barone commented that this was very helpful and informational so that he could address all the board's concerns and reiterated that he would like the opportunity to continue this matter. After asking for the frontage of the property, which he was told was 102 feet, Mr. Femia explained, according to Sec. 4.2 of the bylaws, for general residence, 40,000 square feet of area and 120 feet of frontage is required, with 25 feet on the front, 10 feet on the side and in the rear. He asked Mr. Olson and Mr. Benson if the building is grandfathered as it does not meet the 120 feet of frontage? Mr. Olson replied that he did not know the full history of this particular piece of property, but would not be surprised if it was first developed before zoning, so the lot size and frontage may be legally nonconforming as grandfathered and that might also apply to the original three-unit multi-family building; as he realizes that the building had been there for decades, perhaps there is legal nonconforming use. (Mr. Barone added that Mr. Dye had told him the building was built in 1900, and he noted that this would be another issue for him to address). Mr. Tignor opined that there was probably pre-existing nonconforming use, and said that would allow the three apartments to be grandfathered in, but a fourth apartment going forward causes issues according to the current bylaws. He commented that often the apartment houses built at that time had two apartments on the left side and on the right side one apartment would have a first and second floor for a larger family; he said that this might not have been the case with this house, but could have been.

Mr. Femia then instructed the petitioner to give all the information requested at least ten days before the next meeting. Mr. Barone replied that they will comply with that. Mr. Olson then suggested that the November 19 meeting is the next meeting, and that the petitioner should be prepared to continue the public hearing to 8:00, as there are topics to be discussed before that. Mr. Barone responded that he noted four issues, and after conferring with Mr. Dye and Mr. Sciarro, requested that they can continue the public hearing to the next meeting after that (Mr. Olson stated that would be December 17) so that they have adequate time to address the issues. Mr. Olson then asked the board for a motion to continue to Thursday, December 17, at 7:05 p.m. Mr. Femia then moved to continue the public hearing for the 24 Sterling Place request for special permit to December 17, 2020, at 7:05 p.m. Mr. Orciani seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “yes”

Mr. Benson – “yes”

Mr. Femia – “yes”

Mr. Olson – “yes”

Mr. Olson thanked Mr. Barone, Mr. Dye and Mr. Sciarro and said that the board will wait for their information at least ten days before the hearing.

Other Business:

Vote sheet for 241 Woodland Street:

Mr. Olson discussed with the board that all members needed to sign the vote sheet by October 25. It will be in the ZBA mailbox for them.

Treasurer's/Financial Report:

This was not discussed this evening.

With no further comments by anyone, Mr. Femia made a motion to adjourn at 9:19 p.m. Mr. Rajeshkumar seconded. The roll call vote was as follows:

Mr. Rajeshkumar – “yes”

Mr. Orciani – “abstain” (he had left the meeting already)

Mr. Benson – “yes”

Mr. Femia – “yes”

Mr. Olson – “yes”

Meeting was adjourned at 9:19 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____

