



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

140 Worcester Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

September 15, 2016

Chair: David Femia

Members Present: David Femia (Chair), Kristina Pedone (Vice-Chair), Barur Rajeshkumar (Clerk) and Charles Witkus.

Others Present: Daniel Cronin (Associate Member) and Secretary Toby Goldstein.

Members Absent: Nate Orciani (Associate Member)

Mr. Femia called the meeting to order at 7:15 p.m. He first discussed the business on the agenda which was to be addressed at the beginning of the meeting:

- a. **Minutes of Previous Sessions – July 21, 2016:** Mr. Rajeshkumar had suggested changes to the minutes, which he had emailed prior to the meeting for the board to review. After discussion, Mr. Rajeshkumar made a motion to accept the minutes with changes. Mr. Witkus seconded. All in favor.
- b. **Minutes of 8/15/16 Training Session with Town Counsel:** After review of the minutes by the board members, Mr. Rajeshkumar made a motion to accept the minutes as submitted. Mr. Witkus seconded. All in favor.
- c. **Minutes of 8/18/16 Meeting:** After discussion, the board decided to continue these minutes to the September meeting, to allow the opportunity for listening to the Secretary's tape of the meeting to confirm the wording of a letter submitted by Mr. Rajeshkumar.
- d. **Minutes of 7/21/16 Executive Session:** Mr. Femia said that he would write out a copy of changes that have been suggested and send them to the board for review; it was agreed to continue these minutes to the October meeting. (Mrs. Pedone reminded the board that Executive Session minutes are not released).

- e. **Invoice from Ed Marchant:** Mr. Femia announced the total of the invoice, and stated that MHP paid a certain amount and that the Town (ZBA) owes him \$5,000.00. He signed the invoice to pay him.
- f. **New Date for Proposed 40B Training with Other Towns:** Mr. Femia informed those present that only one town responded so far to the ZBA's invitation to attend this training, so he suggested waiting until after the first of the year to make another attempt. (There were no comments from any other board members).

Informal Discussion With Phillippe Chevalier Regarding 94 North Main Street:

Mr. Femia announced that Mr. Chevalier, former Chair of the ZBA (until late 2012), was invited to attend the meeting. Mr. Femia informed those present that the Comprehensive Permit for 94 North Main Street was due to expire on October 3, 2016, and that the developer still did not have final approval from MHP; he asked Mr. Chevalier to attend because he was the ZBA Chair in 2008 when the original Comprehensive Permit was approved, and his signature was on all pertinent documents. (Mr. Femia then called Mr. Chevalier to come before the board, thanked him for attending the meeting and asked him to present information on the history and the documentation). Mr. Femia then summarized from the original decision from 10/3/2008, stating that, if construction was not done within five years, the applicant was entitled to one three-year extension of the permit. He mentioned to Mr. Chevalier that the majority of Comprehensive Permits are approved for three years and asked if there was a significant reason that the board approved it for five years? Mr. Chevalier responded that, over a year ago, the Building Inspector asked him if he had information on this subject, and he turned over anything that he had to the Building Inspector. He explained that some documents were lost and he gave Chris Lund (the former Building Inspector) all of his notes. He continued that, regarding the five years, legislation was passed that extended permits due to the economy and thought that this was probably part of the reason for the five years but he did not have notes to substantiate that.

Mr. Femia then asked Mr. Chevalier to explain what constituted construction, and asked if the developer needs a Building Permit in hand? He explained that there are differing opinions as to what is meant by construction. Mr. Chevalier responded that, in his opinion, if the Town authorized the builder to do work, even though he does not have a building permit yet because for some reason it is still in process for some reason, he may be allowed to do such things as site work and foundation work, and Mr. Chevalier would consider that to be construction starting. Mr. Femia then asked him, when the permit was approved, the applicant was allowed one three-year extension, but asked, if construction did not start before 2013, if the applicant can ask for an extension? Mr. Chevalier replied that he can do that. He continued that the board spent a substantial amount of time on the permit and the vote; they approved 60+ units

whereas the applicant applied for 126; the board eliminated one building on the hill and eliminated the top floors to reduce the units; the developer then appealed the decision. Mr. Femia asked about the fact that 96 units were approved in 2008. Mr. Chevalier replied that the ZBA approved 60, then a legal process with the State took place. He described that the 40B law states that, if the ZBA approves the permit, the developer needs to prove that it will be uneconomical for him; because of a legal decision, the developer was able to come back to the table and the ZBA negotiated; HAC made a decision, and the only item that the Town was granted was that the development was not to be called the Village of Oakdale. Mr. Chevalier continued that the Town appealed HAC's decision, and said that the Supreme Court of MA told HAC that they cannot consider denial; negotiation began and the Town ended up receiving back all fees and the project was returned to what it originally was, and the board conceded that the developer would get \$20,000 taken off of the building permit fee, and the number of units would return to 90+, with several three-bedroom units converted to one-bedroom units mainly for the elderly. Mr. Chevalier described that all the money taken by HAC from the Town, around \$750,000, including building permit fees and water fees, went back to the Town; the developer took \$20,000 off of the building permit fee, so the Town only lost the \$20,000; the Board of Selectmen approved this.

(This concluded Mr. Chevalier's presentation). With no questions or comments from the board, Mr. Femia thanked Mr. Chevalier. Mr. Chevalier added that Mr. Lund has a box of information from Mr. Chevalier in his possession.

Public Hearing, DHJ Inc., Petition for Special Permit, 76 Maple Street:

(Representatives were David Johnson and Amanda Risch of Fletcher Tilton, Attorneys for the applicant). Mr. Femia read aloud the legal notice. Ms. Risch then spoke, explaining that the applicant was seeking relief from minimum lot width in the zoning bylaws required to construct a single-family home. She asserted that the property meets all other requirements of the bylaws. She added that the applicant is not trying to construct a huge home on a small lot on which it will not fit; he only wants to convert vacant land and construct a single-family home. She quoted Section 4.2C of the bylaws, stating that the board can grant special permit relief where appropriate and reduce lot width if the width is greater than 100 feet; she explained that the applicant had 112+ feet, and the bylaws require 120 feet, so there is only an 8+-foot difference. Ms. Risch also added that there would be appropriate and adequate access to the property and pedestrian and vehicle safety, which are other requirements of the bylaws, and that a single-family home would be compatible with the existing use of the neighborhood.

In response to a question from Mr. Femia, Mr. Johnson replied that the lot is larger than one acre in size. (Mr. Femia referred to the map in the petition packet). He followed the proposal, pointing out a driveway easement from lot 1 onto lot 2, and noted that, at the beginning of the

property, the width is 120 feet, but going back 60 feet, the width changes to 112 feet. Mr. Femia opined that this situation was within the parameters of what would be allowed.

Mr. Witkus then asked why there was this unevenness in the lot and if the owner of lot 2 bought land from lot 1? Mr. Johnson explained that lots 1, 2 and 3 were all part of one lot. In response to a question from Mr. Witkus, Mr. Johnson replied that there is a house on lot 3, and replied to Mr. Witkus and Mr. Femia that, when the property was subdivided, there was a groove already there, and explained that the owners did not move the property line the extra eight feet because there was not room for that. (Mr. Johnson then explained the size differences on the map to various board members). Mr. Femia then read aloud from the opinion letter issued by the Building Inspector, Bentley Herget (letter is part of petition packet), stating that, according to Section 4.1E in the bylaws, the shortest distance between side lot lines, when measured anywhere between the lot frontage and the existing or proposed main building on the lot, shall not be less than the required minimum lot frontage, but an applicant can come to the ZBA for relief; Mr. Femia thought that the bylaws cover this situation. (Mr. Johnson then clarified lot size, sizes of surrounding properties, and lot ownership for Mrs. Pedone and Mr. Witkus).

With no further questions or comments from the board, applicant or audience, Mr. Cronin made a motion to approve the request for special permit. Mr. Rajeshkumar seconded. The vote was 4 “yes” to 1 “no”, and was as follows:

Mr. Rajeshkumar – “yes”

Mr. Cronin – “yes”

Mr. Femia – “yes”

Mrs. Pedone – “yes”

Mr. Witkus – “no”

The motion passed to grant the special permit.

Petition by Marino et al, 0 West Boylston Street (Flagg RV) for Special Permit:

Mr. Femia reminded the audience that this public hearing was postponed to the next ZBA meeting.

Capital Items for Fiscal Year 2018 (part of “Miscellaneous Mail”):

Mr. Femia discussed this paperwork from the Town Administrator’s office, asking for departments to submit requests for items for the next fiscal year. Mr. Femia suggested, and

was submitting on the reply form, a request for more funds for legal fees for the ZBA. There was no disagreement from the board, and no suggestions for additional items.

Continued Discussion of 94 North Main Street Request for Extension of Special Permit:

(Dean Harrison and Iqbal Ali represented). Mr. Femia repeated that the developer (Mr. Ali) was looking to extend the Comprehensive Permit discussed earlier with Mr. Chevalier. Mr. Femia explained that he had a discussion with Town Counsel on how to proceed with the request, and that Town Counsel responded to his questions. He said, speaking for himself, that Town Counsel did not respond until Wednesday, the 14th, and he needed to look into the information; he told the board members that, if they decide to vote this evening, he would vote “no” but if the board decides to continue the vote, they can respond to him with questions and comments. Asking the board if they want to vote on the extension this evening, Mrs. Pedone asked, if the board did not vote this evening and the permit lapses, does the board need to approve it to continue it? Mr. Femia responded that he asked Town Counsel, who said that the board could take no action and let the permit lapse, but opined that the petitioner would go to HAC stating that the board denied the extension and HAC would probably overturn the decision (he read Town Counsel’s email stating this opinion). Mr. Witkus opined that they should wait, asserting that he did not know about this matter (Mr. Femia reminded him that the information only came this week from Town Counsel).

Mr. Femia then said to the board that he wanted to wait to vote, and suggested that they could continue it to after the training session with Town Counsel scheduled for 9/22, or come back on 9/29/16 (Ms. Goldstein responded to Mrs. Pedone, that only 48 hours notice was needed to post an agenda for whatever date they chose). Mr. Witkus then made a motion to continue the vote until September 22, 2016, after the training session. Mr. Cronin seconded. All in favor.

(Mr. Harrison then asked to address the board). Mr. Harrison reiterated that Mr. Ali is requesting an extension of the permit; he continued that they had not received final approval from MHP yet, but did not believe that it is part of the Comprehensive Permit that final approval is needed for extension. He also thought that there was not a definition of “construction” given. Mr. Harrison said that they were told that they could start site work (which they did in April, 2016). He added that they respect the board wanting to obtain as much information as possible, but believed that the board should consider granting the extension and the reasons for it. He said that they are doing this for precautionary reasons, but based on what is issued in the permit and what is in State law and the bylaws, which discussed lapse of the permit happening when construction is not started within three years; he said that the developer intended to start (they began site work), and, as a precaution, submitted the request for a one-year extension, but thought that it was not necessary as they believed that construction did start. He added that they pulled sewer and water permits.

Mr. Ali then explained that the previous bank loaned for less than 90 units, and he lowered the amount to 80 units, so he had to go to another bank; he asserted that construction started, with the Town inspecting water and sewer. In response to a question from Mr. Witkus as to why Mr. Ali did not receive his funding yet, Mr. Ali explained that they previously were going to build 96 units, but when they changed it to 80, the bank did not want to fund it. Mr. Harrison further explained the events causing Mr. Ali's delay in funding, and asserted again that construction had started and is being reviewed. He added that the funding can be given all at once, and the subsidizing agency does not have to notify the board if the construction lender changes. Mr. Femia asked him who authorized this? Mr. Harrison responded that, in 2015, the board approved the permit and signed it.

Mr. Rajeshkumar asked Mr. Harrison why they were requesting an extension? Mr. Harrison and Mr. Ali responded that it is not clear to the bank, and either they do not need one, or a condition can be put on the permit for purposes of the building permit. Mr. Femia then asked what would happen if the board approves the extension and MHP does not give final approval? Mr. Harrison replied that MHP will not give final approval until the project is complete; he explained that the construction lender gives money to Ali to do construction, and MHP comes in later to approve. Mr. Ali, in response to questions from the board, said that 90% of his units are rented, and that he used his equity to pay for it. Mr. Femia asked him, if MHP does not give final approval, will Middlesex Bank take back their loan? Mr. Ali replied that Rockland Trust will do it.

Mr. Femia then expressed concern that this is the first time that the board heard about a third party being involved; they had asked previously about financing but the applicant did not mention that MHP was bringing in a third party analysis, and said that it would have been good for the board to know about this; he asked why this third party is necessary? Mr. Harrison responded that there was no malice or oversight on his part, and explained that front end analysis looks at drawings, budget, and confirms that to be true for the cost, and said that third party report are often provided. He added that he really believed that they would have MHP's report by now. Mr. Ali added that the change to 80 units caused the financing procedure to have to be done again. Mr. Femia asked, if he called David Rockwell of MHP, could he tell the board how soon it would be and if there is approval? Mr. Harrison responded that he did not think the extension of the permit was even required, and he said that he could ask for clarification that construction has started.

With no further questions or comments, Mr. Femia announced that, on September 22, 2016, the board will continue this vote at 7:15 p.m.

With no further business to discuss, Mr. Cronin made a motion to adjourn the meeting. Mr. Rajeshkumar seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____