



# TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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## MEETING MINUTES

February 25, 2016

Chair: Kristina Pedone

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

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

Members Absent: Paul Hennessey (Associate Member).

At 7:15 p.m., Mrs. Pedone called the meeting to order. She read the names of members present. Mrs. Pedone stated that the first item to be discussed on the agenda was the public hearing for 393-395 Lancaster Street.

### **Public Hearing, Mary Ann Derrah, Vincent N. Pasquale, Michael A. Pasquale, Paul J. Pasquale and Sharon A. Pasquale-Gadoua, Petition for Variance, 393-395 Lancaster Street:**

(Mr. Femia read aloud the notice of the public hearing). (Atty. George Kiritsy represented for the petitioners). Atty. Kiritsy explained the issues involved in this request for variance, which is for the reconfiguration of the property line between two lots, which will change setback and frontage for 389 and 393 Lancaster Street, respectively. He mentioned that, first of all, was an issue regarding property addresses. Showing the board the Assessor's map of the area, he pointed out that, on the abutters' list submitted with the petition, #389 Lancaster St. is 393 on the map, and 393 is really 395, and he believed that this was a source of confusion. Next he explained why they filed the petition. He said that there was a technical issue. Atty. Kiritsy explained that in the early 1950's was the original configuration of the property and he pointed out on the map the division of the lots into two lots, with the two brothers, Dominic and Italo, each having one lot. He said that the family built houses there but with no regard to the property lines, describing that Italo Pasquale's house was too close to the property line, and Dominic Pasquale's extended on to Anna Pasquale's property. He continued that, in 1960, the new plan took land from Anna's property and gave it to Dominic; Italo now had setback, and Dominic had setback, and if the deeds were done in 1960 there would be no problem today;

however, these land exchanges were not completed by deed and title remained exactly as it was in the early 1950's. Next, Atty. Kiritsy said that title changed in 1970, and Mr. Murphy (who owned land to the south) gave land to Italo which fixed the southern border of the property; in 1976, Anna deeded land to Dominic, which fixed the problem on the north side of his property. But no one ever completed the land swap between Italo and Dominic, and their property line remained as it was in 1953. Meanwhile, Italo's house stood up to Dominic's property line or inches over it (Mr. Kiritsy showed the board the current legal configuration map). At this time, Dominic's estate is in the process of selling the house and lot located at 395 Lancaster Street. A review of the Assessor's maps revealed a configuration different than the record title. West Boylston has been assessing the lots as if the conveyances had been completed as originally intended in 1960, with the new boundary between the lots, and the Town has been assessing the lots as if the lot line had been legally changed in 1960. The parties involved want to correct the title, so that the legal title matches the property configuration and the Assessor's plan.

Mrs. Pedone responded to Mr. Kiritsy that the deeds have nothing to do with ZBA. Mr. Kiritsy asserted that, if they just correct the deed situation, non-conformity will result. In response to a question from Mr. Benson, Mr. Kiritsy replied that changing the lot line will create non-conforming lots. He asserted that creating the deeds will cure the title but will create zoning problems. In response to a question from Mr. Benson regarding which problems he was referring to, Mr. Kiritsy replied that Dominic's lot, which is one-half acre, is below zoning size, and taking away part of it will make it more non-conforming due to insufficient frontage; so they want to increase Dominic's frontage because, to create a property line, they must take away from Italo's property. Mr. Benson suggested that they could do a new plan with a new geometry, with the same starting point and change the location of the angles shown on this map. Mr. Kiritsy asserted that there would still be non-conforming lots because it does not meet the minimum frontage as it is now.

Next, Paul Pasquale 84 Lombard Road, Hubbardston, MA spoke, explaining that the end of the driveway is not on the correct lot. Mr. Benson suggested that the driveway problem could be resolved with an easement. Mr. Kiritsy responded that, if they keep it as it is, a non-conforming lot and use easement, the Assessor's Office still has the wrong configuration. Mr. Benson asked if they could just have the Assessor fix it? Mr. Kiritsy responded that, in 1960, the configuration on the plan was what everyone intended, and he is now just trying to make the lots look as they were designed. Mr. Benson then asked where the 1960 plan came from and if it was submitted to anyone? Mr. Kiritsy replied that the plan was signed and filed with the Registry of Deeds and thought that the Assessor probably used that to reconfigure the lot lines, but no deeds were ever done. The Town accepted it, but the title never changed. Mr. Benson asked, if the title changes and the Town has accepted it, why can it not be grandfathered in? Mr. Kiritsy replied

that if the deeds were done prior to the zone change, it would have been okay. Mr. Benson surmised that the Town has operated and taxed based on the plan that it has.

Mrs. Pedone then pointed out that this is what they have for a layout, but the title was not done, and believed that the board did not have a variance to act on because that was their configuration of the property. Mr. Kiritsy responded that the law says that he can fix the title but can't just record it because it is subsequent to a zone change. Mr. Benson then asked why they are requesting a variance, as a special permit deals with frontage change? Mr. Kiritsy replied that, in West Boylston, a special permit is used to reduce frontage when there is a minimum lot width and area, and they do not have the width and area required for a special permit, but he asserted that they can apply for a variance on frontage. In response to a question from Mr. Benson, Mr. Kiritsy replied that they are seeking relief from Section 4.2, dimensional requirements, of the bylaws. Mr. Benson asked him what the frontage was at this time, and Mr. Kiritsy replied that, at 393, Italo's property, the frontage is 81 ½, and added that they are not constructing and everything is pre-existing, and that it increased in size in 1960.

Mrs. Pedone then expressed the thought that the board needed more information and also an opinion from the Building Inspector. Mr. Kiritsy explained that they just want to file deeds without creating any additional problems. Mrs. Pedone asked for an additional picture to show where the driveway and property line will be. Mr. Kiritsy explained that these lots are privileged non-conforming, and that if a deed is put on the lots, they could lose the privileged status (and he showed the board the privileged configurations). He added that they could have done easements, but the property has been in the family since the 1950's, and now they want to sell a lot to a grandson, but there is the issue with configuration and the legal description does not match the configuration.

Mrs. Pedone asked Mr. Kiritsy to send a letter to the board, and Town Counsel and Building Inspector will review it, explaining why the applicants are requesting a variance, and asked him if he could come back to the March meeting and the board will provide the information to him? He said that he will come back.

Next Mrs. Pedone opened the hearing to public comment; there were no comments or questions. Mr. Femia then asked Marc Frieden of Planning Board whether or not the property is grandfathered in as the zoning bylaws were different in 1960? Mr. Frieden responded that there is a dilemma in that if they obtain a deed today since the grandson wants the property, but the ANR plan is from 1960, there may be a problem. Mr. Femia asked Mr. Kiritsy if surveying was done? Mr. Kiritsy explained that the grandson wanted to buy the property and when the surveying was done, all of this was found; having to do title for the property, the registered deed could not be found. The Assessor's deed was from the 1950's and the lot lines were different; the 1960 plan was not recorded until 1970, and the main issue is the property

line in between the properties and the legal property line does not agree with what is there. Mrs. Pedone repeated to Mr. Kiritsy that he should follow up with the board next week as instructed and the board will send him information for the March meeting. Mr. Kiritsy responded that they believe that the board has the authority to give them all the relief needed, and he will include why he believes that a variance is needed in his letter to them.

**Public Hearing, Mark Alzapiedi, Petition for Special Permit, 18 North Main Street:**

(Mark Alzapiedi represented). (Mr. Femia read aloud the notice for the public hearing, which is for the applicant to buy, sell and store used cars at 18 North Main Street, on the property of his business, Watermark Antiques. Mr. Alzapiedi stated his name and address). Mr. Alzapiedi explained that he owns an antiques and collectibles business, and that, over the last ten years, business has decreased so that he wants to supplement his income. He purchases vehicles occasionally from estates, describing how he recently purchased an antique vehicle and the Registry of Motor Vehicles told him that he would need a car dealer's license in order to be tax-exempt. He then referred to a letter from Planning Board (ZBA has this on file) regarding his filing for special permit, stating that there are legal and engineering deficiencies to what he planned to do, and asked the board if it was advisable that he continue the public hearing and hire a lawyer? He explained that he would only have a handful of vehicles each year, only one at a time on the premises, which he would sell on the Internet, and that this would be only to supplement his income.

Mr. Femia asked Mr. Alzapiedi if he wanted to continue the public hearing? Mr. Alzapiedi responded that, after seeing the list of concerns from Planning Board, at first he thought that he shouldn't bother with the request. He said that he was rather surprised and not ready to give all the information that the Planning Board was looking for. Mrs. Pedone responded to him that the board will read the petition thoroughly, along with the zoning bylaws, and come to their own opinion of the next move to take, as the Planning Board referenced areas in the bylaws in their opinion letter. Mr. Benson made clear that the applicant's request of the continuation will be stated in the minutes; the ZBA did not suggest to him that he should continue.

Mrs. Pedone asked the applicant if he will give the board 60 days to continue this (at the ZBA April meeting)? Mr. Alzapiedi replied that 60 days would be fair. (The Secretary was instructed to place this item on the April meeting agenda). Mrs. Pedone instructed Mr. Alzapiedi to send a note to the board requesting a 60-day extension, and then opened the hearing to public comment.

First to speak was Ben Hebert of 12 High Street, who noted that he lives directly across from Watermark Antiques. Regarding the restrictions that the applicant outlined, he asked if those

could be in the board's decision, such as the number of vehicles allowed to be for sale at any one time? Mr. Rajeshkumar suggested that enforcement would be a problem. Mrs. Pedone thought that the board could put those items in the decision if it ever goes through. Mr. Hebert asked if the permit would be transferrable if the property was sold? Mrs. Pedone said that it would not be transferrable.

Next to speak was Pat Barrie of 72 Laurel Street. She expressed concern because the petition request was posted as for a "used car lot" and the area of the property is a historic district and there were questions regarding where people would park. But, she said that the applicant explained his intentions and it turned around her thoughts about it. She acknowledged that the lot was not big enough for many cars and that made what he was saying more reasonable.

Beverly Goodale of 195 Crescent Street spoke next. She stated that she was at the meeting for the Historical Commission, and mentioned that Mr. Alzapiedi's property has been on the historical register for 20 years. She had concerns about preserving the original West Boylston, and thought that the proposed business should have been for "antique" rather than "used" cars. She suggested that it should be remembered that there are 30 buildings in that area included in the historical register when making a decision about this matter.

Mr. Alzapiedi responded to Ms. Goodale's comments. He said, regarding the historic district, that he bought the building for \$200,000 thirteen years ago to restore it, and asserted that no one would ever know that there was a car dealer there. He added that he is sensitive to the nature of the district.

Bruce Dickinson of 16 North Main Street next expressed concern about signage and number of cars and traffic. He thought that the ZBA could enforce that. Mrs. Pedone responded that the board would consult Town Counsel to find out if they could in fact restrict the number of cars. Mr. Benson continued that additional questions for Town Counsel would be limitation to antique cars and no signage. Mr. Alzapiedi responded that the Department of Motor Vehicles requires a sign, but asserted that it would be tasteful.

Mrs. Pedone next asked about the number of parking spaces that there would be. Mr. Alzapiedi replied that there would be 4 to 5 in the front, maybe 6 or 7 in the back, and 6 on the side, and that there would be asphalt with lines on the front. Mr. Benson advised him that the Town has certain requirements for parking spaces so he must provide that information. Mrs. Pedone added that she has also asked the Board of Health for their opinion and the board will distribute that when they receive it.

Mrs. Pedone then asked him if he owns the property? He replied that he does own it. Mr. Femia, referring to the petition, commented that the property is in Mrs. Alzapiedi's name. Mr. Alzapiedi explained that their house is in his name, but the building is in her name, and their

attorney suggested that they do so. Mr. Femia said that Town Counsel would have to decide if he is authorized to obtain the special permit; Mrs. Pedone added that Mrs. Alzapiedi would have to make the request.

After discussion with the applicant and the board, Mrs. Pedone announced that the public hearing will be continued to the April 21 meeting at 7:45 p.m., and instructed Mr. Alzapiedi to send a request for an extension to the board if he needs to have more time. He asked if his wife would need to submit the request for an extension? Mrs. Pedone said that she would have to do that. He also asked if he should just start the process from the beginning again? Mrs. Pedone replied that the petition was not filed correctly and there is vague information; the board can waive the fee to re-apply, but abutters must be contacted again if a new petition is filed.

Mr. Benson then stated that Mr. Alzapiedi's choices were to request to withdraw his petition, or the board can vote to approve or deny at this time. Mrs. Pedone asked Mr. Alzapiedi if he would want to request to withdraw the petition without prejudice, and if his wife re-applies, the board will waive the fee? He agreed with that. Mr. Benson made a motion to vote to accept or deny the request to withdraw the petition for special permit for 18 North Main Street without prejudice, and to waive the fee if it is re-applied. Mr. Femia seconded. All in favor. The vote was as follows:

Mr. Witkus-“yes”  
Mr. Femia – “yes”  
Mrs. Pedone – “yes”  
Mr. Benson – “yes”  
Mr. Rajeshkumar – “yes”

The motion carried; the petition was withdrawn without prejudice, and the fee will be waived upon re-application.

**Board of Trustees of Afra Terrace and Ruane Property Management, Followup on “As-built” Plans Submitted by Developer:**

Mr. Femia discussed an e-mail received that day from Andrea Austin of Ruane Property Management, stating that she had a family emergency and the Trustee planning to attend the meeting was sick, therefore she wanted to postpone discussion of this matter. Mrs. Pedone stated that the board had not received any updated plans yet and would not take any new materials at this time. She instructed Mr. Ali (the developer) that he must obtain the Conservation Commission's approval of the “as-built” before coming to the ZBA for their approval. It was her opinion that this matter should be continued until the next meeting on Thursday, March 24, at 7:15. She added that, if the plans are not approved by the Concomm by then, they will not be seen. Mr. Ali responded that the Conservation Commission requested

snow storage information and the engineer's stamp on the plans and that should be all done for the next meeting. (Mr. Ali also gave the board a letter and recorded Restated Amended Decision for the 94 North Main Street comprehensive permit. In response to a question from Mr. Benson, Mr. Ali said that they were received and stamped first by the Town Clerk).

**Mail and Paperwork:**

Mrs. Pedone reviewed mail and signed some paperwork for the Secretary. (Mr. Femia notified the board that there was to be a CPTC training session on March 19, and one item on the agenda pertained to 40B projects, in the event that anyone was interested).

**Minutes of January 28 Meeting:**

After review of the minutes by the board members, Mr. Femia moved to approve the minutes as submitted. Mr. Rajeshkumar seconded. All in favor.

With no further business to discuss, Mr. Femia moved to adjourn the meeting at 8:30 p.m. Mr. Rajeshkumar seconded. All in favor.

Respectfully submitted,

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Toby S. Goldstein, Secretary

Date Accepted: \_\_\_\_\_

By: \_\_\_\_\_