



# TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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## MEETING MINUTES

**March 16, 2017**

Chair: David Femia

Members Present: David Femia (Chair), Barur Rajeshkumar (Clerk), Christopher Olson, Charles Witkus and John Benson (Associate Member).

Others Present: Secretary Toby Goldstein.

Members Absent: Nathaniel Orciani and Daniel Cronin (Associate Member).

Mr. Femia called the meeting to order at 7:04 p.m. this evening (Mr. Benson stood in as a full member for Mr. Orciani).

### **Other Business:**

- a. **Minutes from February 16, 2017 Meeting:** After review of the draft minutes by the board members, Mr. Olson suggested some changes. With no further changes suggested, Mr. Rajeshkumar made a motion to accept the minutes with changes. Mr. Olson seconded. All in favor (Mr. Benson abstained).
- b. **Miscellaneous Mail and Paperwork and Items for Discussion:** Mr. Femia wanted to discuss a few items with the board:

**1. Regarding Afra Terrace:** Mr. Femia discussed some of the history of the project's progress and some outstanding issues. He mentioned that all units have been sold; 39 at market value, the rest affordable. He said that the Town is awaiting cost certification from MHP. Ms. Goldstein had sent an e-mail to the management company and obtained an update regarding their status with the project as well as all paperwork they have received regarding the project (this e-mail was sent to the ZBA members). Mr. Femia, having attended the March 6 Conservation Commission meeting, informed everyone that Mr. Ali assured the Commission that he would have an "as-built" for them at their April 3 meeting that will indicate catch basins and snow storage information; the Commission will send a copy of the Certificate of Compliance that they issue after obtaining the information to ZBA and the management company. Today, Mr. Femia met with the Building Inspector, Town Administrator, and Affordable Housing Trust to discuss what might be done with future developments to make the process work better. He added that he went through all the Afra Terrace paperwork that ZBA had in its files, and it appeared that the ZBA was not properly informed about all of it.

**2. Regarding Tashjian Property, 363 Prospect Street:** Mr. Femia reiterated the decision regarding this petition (made at the February 16 meeting) for variance and appeal of Building Inspector's decision, stating that the ZBA suggested giving Dr. Tashjian three months to remove his vehicles from the property, and six months for the storage containers. The Building Inspector, Bentley Herget, sent Dr. Tashjian a letter (on file) agreeing with the ZBA's suggestions and said that, on May 16, 2017, he will investigate the property regarding the vehicles and give a report to ZBA; on August 16, he will do the same thing regarding the storage. Dr. Tashjian will have to pay \$100 per day if he does not remove the vehicles by the above date, and if the storage is not removed by August 16, a second fine will begin of \$100 per day. (Mr. Femia then spoke to Dr. Tashjian, who was in the audience, making sure that he received the letter and understood the stipulations).

**3. Regarding 92 North Main Street:** Mr. Femia discussed an e-mail from Mr. Herget on March 2, notifying Mr. Ali that he needed to use fire-treated plywood in certain roof areas and he had to remove what he had placed there and replace it. He verified with Mr. Femia that this had been taken care of. He also updated the board on the progress of construction at the project. Mr. Femia asked Mr. Herget to inform the board if there is anything concerning, and they can ask VHB engineering to check into it.

**4. Regarding Tree Replacement at 92 North Main Street:** At a previous ZBA meeting, a resident asked when tree planting promised at 92 North Main Street was going to be done; Mr. Femia informed those present that there had been no response so far from the developer, even though Ms. Goldstein had sent another e-mail to him about this.

**Public Hearing, KIS, LLC, 321 West Boylston Street (West Boylston Seafood), Petition for Variance:**

(John Wyka represented). (Mr. Femia read aloud the legal notice that was posted). Mr. Femia explained that the petition was for variance to upgrade the present removable letter sign to a digital sign. He called Mr. Wyka forward to address the board; he explained that Mr. Wyka will give his presentation, then the board will ask questions, then there will be public comment, then any other additional comments by anyone, and he explained that there would have to be a supermajority (four) of "yes" votes for the request to pass. Mr. Femia told Mr. Wyka that the ZBA received a letter from Planning Board, and zoning interpretation from the Building Inspector, who he added was not in favor of the proposed sign as the bylaws only allow 12 square feet for digital signs, and the applicant wants 18. Mr. Femia asked Mr. Wyka if he received all the information, and Mr. Wyka replied that he did not see it. Next he gave his name, that he was owner of KIS, LLC and West Boylston Seafood, and explained that he is looking to have a 3' x 6' electric color sign in place of one with hand-removable letters and numbers. He continued that they will refinish the sign post, and will replace the fish logo with another logo of the same size.

Mr. Wyka described the reasons that he was seeking the variance, referring to an attachment to Form A of the petition packet that outlined his reasoning. First, he wanted to keep up with the technology on West Boylston Street, which has changed over time. He asserted that the sight line of their building had decreased. He also asserted that his neighbors' buildings were "landmarks" for people trying to find his business.

Mr. Wyka continued, that it would be safer and more convenient for his employees to not have to go outside on a regular basis and manually change the sign.

Next, Mr. Wyka opined that there would be no substantial detriment to the public with the proposed sign, explaining that it would be easier to read than what they had now, and offered that he could improve the aesthetics of the sign. Also, regarding a question of detriment to the public, Mr. Wyka asserted that West Boylston Seafood had been good for the residents in West Boylston for fourteen years.

He continued that they do not plan to bypass the bylaws or do anything extreme, noting that they want even less animation than what the bylaws allow and do not intend to have any twirling or gaudiness, just a plain image on the sign. He added how they were the first new building on Route 12, with many to be built after them, and he considered their building to be a “cornerstone” with many nice new buildings to come after them. In conclusion, he explained that many people who knew of the seafood market did not know that there was a restaurant there, and vice-versa, and, summarizing, he said that they want to attract new customers, be easier to find, and for current customers to know what they are all about.

(The board now asked questions of the applicant). In response to a question from Mr. Witkus, Mr. Wyka reiterated that he wants a 6' x 3' sign, the same size as the present one (noting that the ENTIRE sign is larger than that, but the part involved in the variance request is 6' x 3'). He verified for Mr. Benson that they will exchange removable letters for a digital sign. In response to a question from Mr. Witkus, Mr. Benson directed him to the opinion letter from the Planning Board which was handed out to the board members; their opinion was that they could find no compelling reason to grant the variance.

Next, Mr. Rajeshkumar thanked Mr. Wyka for his business, and then asked how much of a difference an 18 square foot digital sign would make for him? Mr. Wyka responded that perhaps the layout or color of the building affect its visibility, and their sign is not located at the street corner or very tall, but he felt that he needs a larger sign with the digital layout and color and mentioned Cumberland Farms' signage. He added that Connor Signs, who would handle the sign, suggested 18 square feet in size.

Mr. Benson then commented that he understood the desire for a larger sign, but the issue facing the board was, if they allow a sign larger than what the bylaws allow, it would be an exception that everyone else could say would benefit them as well. He explained that the standard for variance is so high, not in this case because of the appropriateness or appearance of the sign, but because of the board having to differentiate this case from anyone else who wants it.

Mr. Wyka acknowledged this, but noted that part of the variance request is for giving color to the sign. Mr. Olson, referring to the Building Inspector's zoning interpretation, said that he did not see any mention of a colored sign needing a variance. Mr. Olson asked Mr. Herget for comment on this; Mr. Herget agreed that there was nothing prohibiting a colored sign.

The board discussed this issue also, and did not see anything in the sign bylaws that said no color, only no animation, including blinking or scrolling or twirling. Mr. Wyka acknowledged the board's comments regarding the 18 square feet, but, regarding color, the sign would not be changing colors as was described above. Mr. Herget commented that the restrictions on digital

signs in the bylaws refers to duration and color changing or imitation of movement; he also discussed limitations on brightness and intensities.

Mr. Benson said that the variance request comes down to size. Mr. Femia then read aloud the section of the bylaws, stating what the guidelines are for variances and signs, and that variances are more specific about hardship, topography, shape and soil, and to comply with size, the sign must be 12 square feet, which includes 2' x 6', 3' x 4', or 4' x 3'. Referring to Planning Board's opinion letter, they could not find for hardship. Mr. Femia suggested not approving the petition as he opined that it did not meet the criteria for variance; he asserted that the State is not favorable to them also, and that, if appealed, a court would not approve it.

Mr. Wyka then questioned if he could have a 12 square foot colored digital sign? Mr. Femia asked Mr. Herget about this, and he replied that this would be allowed under zoning. Mr. Olson and Mr. Femia concluded that Mr. Wyka needed nothing from the ZBA, and suggested that he go back to the Building Inspector for only a 12 square foot colored digital sign. The board discussed change of color in terms of duration, and not wanting Las Vegas-type flashing signs, and they agreed that the bylaw means to avoid animation in the sign and any transition should be instantaneous.

Mr. Olson asked Mr. Wyka, if he is satisfied with a colored image and a 12 square foot size, would he want the board to vote on the variance, or would he want to withdraw the petition? Mr. Benson explained that, if the board votes, Mr. Wyka could not come back for one year if he changes his mind, whereas, if he withdraws the petition, he can come back. Mr. Wyka decided to withdraw the petition.

Therefore, Mr. Rajeshkumar made a motion to close the public hearing. Mr. Benson seconded. All in favor. Next, Mr. Rajeshkumar made a motion to approve withdrawal of the petition without prejudice. Mr. Benson seconded. All in favor. Mr. Femia and Mr. Herget reiterated that Mr. Wyka can apply for a 12 square foot colored digital sign.

### **Other Business:**

**1. Land Minimum Analysis:** (A handout was given to the board). Mr. Femia discussed meeting with MHP and the Town of West Boylston, according to this analysis, has a figure of 1.53 % land area minimum, which puts the Town over the required minimum of 1.5% , meaning that the Town could turn down a request for a new 40B project. He mentioned that only the town of Weymouth won a court appeal of the assertion that they did not meet the 1.5% criteria.

**2. Appeal of Decision Regarding Brossi Petition, 264 Prospect Street:** Mr. Femia gave some background on the petition and the fact that the board met three times to discuss this and voted not to grant the request for special permit in February. He discussed how the land was located in the Aquifer Protection District and how several Town boards and departments and residents, due to concerns about contamination of the Lee Street well, were against the petition to shorten frontage and create six lots on the property. Now, Mr. Femia informed everyone that the applicant is taking the ZBA to Superior Court, believing that the ZBA decision was not based on the right information and that they did not have the right to disapprove the request for that reason. Mr. Femia informed them that the situation is going to Town Counsel, and the board agreed that there should be no more discussion of the situation at this time.

**3. Dr. Tashjian Discussion Regarding 363 Prospect Street Decision:** Mr. Femia informed those present that the board received an e-mail from Dr. Tashjian, stating that he wanted to talk with

the ZBA and Planning Board; he sent another e-mail today, requesting 30 minutes uninterrupted to speak before the board to clarify certain issues, and he noted that he was not asking for anything from them. He felt that there were inaccuracies stated by certain people at his public hearing on February 16, 2017. Mr. Femia asked the board if they wanted to give him this requested time? Mr. Benson responded, asking what the basis of this request was, and it seemed that the board had voted to deny the variance, and asserted that any further testimony on this issue would mean that the hearing was not closed. Mr. Femia responded that Dr. Tashjian asserted that he "could not make himself clear" as it was an inappropriate atmosphere. Mr. Olson expressed sympathy, but was concerned that there could be a legal issue as the public hearing was closed and the decision was still within the appeal period, whereas at the next meeting, the 20-day appeal period would be over and it would be a deader issue. Mr. Benson agreed, but thought that taking in new evidence on a closed issue could be a potential problem, and that, unless there is an appellate procedure to reopen it, it would violate the Open Meeting Law. Mr. Femia and Mr. Benson agreed that it should be left as is.

Dr. Tashjian then asked to speak, making clear that he was not appealing the decision, but asserted that important facts should get to the ZBA for the future of the water supply. Mr. Femia responded that the board decided that they were not going to talk about it because of legal ramifications; he acknowledged Dr. Tashjian's contributions and concerns, and suggested that he might take it up with the Town Administrator and/or Board of Selectmen (no more comments were accepted regarding this subject).

(Mr. Femia then notified everyone that the next ZBA meeting would be Thursday, April 20, at 7:00 p.m., and thanked Mr. Benson for participating this evening).

With no further business to discuss, Mr. Rajeshkumar made a motion to adjourn the meeting at 8:20 p.m. Mr. Benson seconded. All in favor.

Respectfully submitted,

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Toby S. Goldstein, Secretary

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

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

