



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

August 15, 2016 – Training Session

Chairman: Kristina Pedone

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

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

Members Absent: None (Will Turner resigned on 8/15/16, effective immediately).

(Others that attended the training were Chris Olson of Planning Board, Kim Hopewell (Town Clerk) and Carolyn Murray, Town Counsel, who was doing the training).

(At 6:35 p.m., Mrs. Pedone called the ZBA training session to order). Mrs. Pedone explained that the ZBA asked for this training (Atty. Murray thought it would be a good idea, also) regarding Special Permits and Variances, and asked if the Open Meeting Law would be discussed. Atty. Murray replied that some of the discussion will overlap with the Open Meeting Law, but this session would be basically about Variances and Special Permits. She gave a disclaimer that none of the information was meant to be legal advice. She also gave a handout to all present of a Powerpoint presentation that she was going to give this evening (handout is on file).

Atty. Murray began by discussing the purposes of Chapter 40A, the Zoning Act, and that this Act is implemented through the Zoning Bylaws. She explained what the Zoning Bylaws do.

Then she discussed the three different Special Permit granting authorities in the Town (ZBA, Planning Board and Board of Selectmen). Atty. Murray explained that some towns want to take the granting power of Special Permits away from their ZBA's. She said that the Zoning Bylaws are open to those three boards to interpret, and they all have different standards. She explained the different things that each body is able to appeal. Atty. Murray mentioned that some towns use a sheet which will deny a resident's request and tell them what action to take

next. (The board then discussed the need for information to come to them for review for the Special Permits at least 10 days prior to the public hearing, so that they have enough time to review it; the Secretary will add it to the website).

Atty. Murray, Ms. Hopewell and the board then discussed the need for materials from petitioners to be time stamped by the Town Clerk and how the board should deal with information received too close to the public hearing for the board to determine if it meets the criteria.

Atty. Murray then discussed the chain of processing of permit filings. If it is part of a Comprehensive Permit, the ZBA is allowed to act as the Planning Board. She said that there are different options to zoning amendment requests, explaining that Planning Board can try to add a zoning amendment, but it must be submitted to the Board of Selectmen first. She said that most zoning bylaws are developed at the local level; use of a zoning expert's help can be very expensive. Atty. Murray discussed that zoning bylaws go first to Planning Board, then to the ZBA; Planning Board has its own public hearing, to which the ZBA can attend and give input. She added that there is no State law making it mandatory to review or change the zoning bylaws.

Next, Atty. Murray discussed Zoning Districts and where the Town wants certain uses to be located, "use variances", what requires a "finding" by ZBA, "grandfathered" uses or structures, and that the burden of proof is on the applicant to prove pre-existing non-conformity. She discussed signage in relation to non-conformity, the "Dover Amendment" regarding regulations to certain uses, but noted that the Dover Amendment does not exempt the property/structure from building code, and the use in question must be part of the primary exempt use.

Atty. Murray then discussed the deadlines within which Variance and Special Permit petitions may be withdrawn, the deadlines for Decisions to be filed, and suggested not continuing a public hearing to the next meeting is case of emergency or no quorum, but choosing a definite time such as 60 days or 100 days. She said that she would send the board a form for permission by the applicant to have an extension. She also said that an applicant can file for "Constructive Approval", but the Town can appeal this, if there was a failure of the board to decide within 100 days of the filing and there was not a continuance. She also gave deadlines for recording of a decision and for exercising of a variance.

Atty. Murray then discussed the Open Meeting Law partially. She explained that deliberation had become interpreted differently and that things such as meeting dates and agendas can be e-mailed between board members, but otherwise they need to be careful about e-mailing. She said that the public can request personal e-mails, and regarding site visits, they should be posted which allows the public to attend but the owner must agree to it. She added that

“accessibility” would be a concern there, and that this would be more of a problem with private than public property.

Atty. Murray further discussed with those present as to what constitutes deliberation, private visits before the public hearing or postings, and she discussed that it was a question of whether or not the board member is still taking in information without talking to someone or if they are taking it in from someone.

Atty. Murray then said, if there were any comments, to give them to the Town Administrator, and suggested that, once voted, the discussion of site visits can be put on future agendas. She suggested that the board members go to the public hearing first, then suggest a site visit there so that the entire site visit is brought into the public hearing process.

With nothing further to be discussed this evening, Atty. Murray and the board tentatively decided to have another training session, continuing from this one, on Thursday, September 22, at 6:30, but they decided to have this added to the August 18 ZBA meeting agenda in order to just verify the date with all board members.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____

