



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

September 22, 2016 – Training Session

Chair: David Femia

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

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

Members Absent: None.

(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).

(Training began at 6:30 p.m.). Atty. Murray brought extra Power Point printouts that were distributed at the last meeting on August 15, 2016, for anyone who needed one (these are also on file at the ZBA office). She informed the audience that Town Administrator suggested that they hold questions until the end of the presentation.

Atty. Murray began her discussion with a discussion of Variances, which is where the training ended on August 15. She mentioned that after the Town Clerk time stamps a petition, the ZBA must act upon it within 100 days. The applicant may request to withdraw the petition any time before it is advertised; if it is advertised, the applicant must ask permission from the board to withdraw and it must be voted upon at the next meeting.

She next discussed hearing requirements. A public hearing must be opened within 65 days, and a decision made within 100 days unless there is a mutual extension, filed with the Town Clerk. After a decision is made it must be filed with the Town Clerk within 14 days, and there is a 20-day "no-appeal" period. An applicant can request "constructive approval" if the board fails to act within 100 days (this also applies to Planning Board). Atty. Murray explained that a Variance is granted to allow use or structure requested by the applicant. There are certain criteria, including shape, soil and topography of the lot, specific to the lot and not applying to

the district, hardship if what is allowed is enforced, if the request is not substantially detrimental to the public, and if the request does not nullify or substantially depart from the bylaws.

Atty. Murray described dimensional versus use variances. She explained that a variance is only good for one year from the date it was voted approved, but the applicant can request a six-month extension. The variance will lapse if it is not exercised within one year, meaning some action must be taken upon the allowances of the variance. She also discussed the need for Site Plan Review by Planning Board.

Next, Atty. Murray discussed Special Permits. She described how they begin with Town Clerk time stamping them upon receipt. The applicant can withdraw without prejudice prior to advertisement of the public hearing, or they need the ZBA's approval (as is also true about variances). If they re-file with a repetitive petition, the application can be denied with prejudice. She said that, however, sometimes conditions change that need to be taken into account, such as changes in the zoning bylaws or changes in makeup of the board.

She continued that a public hearing must take place within 65 days of filing of the petition, and a vote and decision made within 90 days. The special permit will lapse after two years if action does not take place. If the applicant files an appeal of the decision, the two-year period is frozen until the appeal is complete. The same is not true for variances. Atty. Murray said that more discretion is allowed to the board than with a variance, but the bylaws must have the criteria listed in them and finding are made according to that. She also said that there is greater flexibility to impose conditions with special permits than with variances; conditions must be stated in the decision. With special permits, there must be a vote and decision filed with Town Clerk within 90 days unless there is a mutual extension, and the written decision must be filed with the Town Clerk within 14 days of the making of the decision. If the applicant decides to appeal the decision, they must file it with the Town Clerk within 20 days of the written decision being filed. This applies to special permits and variances. To overturn the decision, it must be found to be arbitrary and not legally tenable; but, if the decision can be supported by the bylaws, the court can uphold it. Atty. Murray also discussed repetitive petitions, and noted that, if a petition is denied, the applicant cannot reapply for two years unless they meet certain criteria. The board requires four out of five members to consent to bringing back a repetitive petition; they must also find some material change in the petition. The applicant must then go through the same process for the petition as before, such as advertisement, abutters' notices).

Atty. Murray also discussed other types of appeals (such as appeals of Zoning Enforcement and decisions of the Building Inspector) and statutes of limitations for court actions, mentioning that, after the time of the statute of limitations, the structure becomes a conforming structure.

This does not happen in use situations (for example, an accessory apartment cannot become rental property).

Next, she discussed the public hearing process. She said that the public hearing must comply with Open Meeting Law. There are advertising deadlines and notices which are to be mailed to those on a certified abutters list from the Assessor's Office. There can be a waiver of notice if the property owner obtained ownership after the assessor's list is updated on January 1; if the person attends the public hearing, that is considered notice. She discussed what constitutes those on the abutters' list.

Atty. Murray then discussed conducting of the public hearing. She included posting, meaning of a "quorum", duties of the Chair, comments by the applicant, questions by the board, public comments, board discussion and follow up by the applicant.

In response to a possible situation brought up by the board, she responded that it would be a courtesy to reach out to the applicant if the board knows that an incomplete board may attend the public hearing, if it is a situation wherein a unanimous vote in favor may be needed. The board is not obligated to do this. This also gives time for the Secretary to obtain a written request to continue the hearing to another meeting, if the applicant decides to do so.

Also discussed was the "Mullin Rule" which Ms. Hopewell said that the Town adopted; a board member can miss one session of the public hearing (if it has continuances) and still participate in sitting and voting on it, so long as the member certifies that he/she has prepared the materials.

Mrs. Pedone and Mr. Femia also discussed reaching out to a petitioner, and Mrs. Pedone explained that the board tries to not have direct contact with the petitioners, but to go through the Secretary instead.

Last, Atty. Murray discussed the procedures at a public hearing. She said that, once the public hearing is closed, there should be no further public comment, and mentioned that no one can be compelled to answer a question. (Training adjourned at 7:35 p.m.).

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____

By: _____

