

**Town of Millbury
Board of Appeals**

Paul Nigosian, Chairperson
Robert Simmarano, Clerk
Harold Proodian
Ken Perro
Daniel Mezynski
Anna Lewandowski, Alternate member



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

Meeting Minutes

Wednesday, February 25, 2015

7:00 pm

Board of Appeals Members Present:

Paul Nigosian
Harold Proodian
Ken Perro
Robert Simmarano
Daniel Mezynski
Anna Lewandowski

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I. Call to Order: Having complied with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, relative to advertising and notifying abutters, the Meeting was declared open by Paul Nigosian at 7:00 pm.

II. Approval of Meeting Minutes:

Upon a motion by Anna Lewandowski and seconded by Harold Proodian, the Board voted unanimously to approve the minutes of the November 12, 2014 meeting.

Upon a motion by Harold Proodian and seconded by Ken Perro, the Board voted unanimously to approve the minutes of the December 4, 2014 meeting.

III. Approve Ann's time card

Motion to accept the time card for Ann Tong for December 7, 2014 motion by Harold Proodian and seconded by Ken Perro, the Board voted unanimously to approve.

IV. Public Hearing:

1. Cobblestone Village at Howe Avenue (Map 34&45 Lot 80-84 & 219-222, R1)

Petitioner: Steven Venicasa-Elite Home Builders, LLC

Petition Purpose: Special Permit for the height of the building

Representative from Elite Builders spoke regarding their desire to change their roof style from a flat roof to a pitched roof. This is a better design with regard to snow loads.

Don MacLeod of 60 Miles Street-spoke asked what the height ordinance was; Ken Perro said he checked with the building inspector who said that it was based on fire & safety. Chairman Nigosian said it was also views and aesthetics. Mr. MacLeod said that the town has these rules for a specific reason and we should go by them. He would like to know what the reason for the height restriction is. Anna Lewandowski said that the new fire engine would alleviate the safety issue now; the aesthetics is a reason; maybe they could remove the top floor then they would be within the height restriction. Maryann MacLeod of 60 Miles Street asked what would be under the pitch of the roof; her nice view is already being infringed upon by putting up that building there anyway; they don't need 72 apartments. Jessica Waters, 62 Miles Street is concerned about losing the tree line and then raising the roof pitch will interfere with their horizon. Steve Venicasa said that the building has to be built to meet MA Fire Code. Larry Richards, 6 Lincoln Ave., said that the buildings aren't going on flat land and the architectural drawings keep changing. Julie Venicasa said that their original idea has not changed; they always wanted to have the pitched roof.

Chairman Nigosian reminded everyone that this Board's duty was to decide only on the height of the roof. Upon a motion by Harold Proodian, and seconded by Ken Perro, the Board voted unanimously to close the public hearing.

Robert Simmarano said that he agrees with Anna that they have shut down projects over the height, they have gotten this far through the planning board and they should not allow the special permit. Ken Perro said that a pitched roof was much safer all the way around. Harold Proodian said that the pitched roof would protect the people and look a lot better. Dan Mezinsky said that the pitch roof is better for everyone involved. Anna Lewandowski said that we have rules and regulations for a reason; it would take the view totally away. Chairman Nigosian is torn on this one; the impact of the project on the abutters is a concern, and the pitched roof looks a lot better aesthetically, he also told the Board that the snow and ice is not their concern.

A motion was made by Harold Proodian, and seconded by Ken Perro, to grant the Special Permit to Cobblestone Village for heights 36'10" to the center line at Howe Ave Maps 34 & 35 to Steve Venicasa. Board members voted 4-1 to approve the requested Special Permit.

Chairman Paul Nigosian explained that there are 21 days waiting period for anyone to appeal the decision and you will be notified by the Town Clerk's office.

V. Dan Rizika 18 Manor Road (Map 23; Parcel 77; Zoning District R-111)

Petitioner: Dan Rizika

Petition Purpose: for the construction of a roof over an existing patio.

New England Environmental design spoke for Mr. Rizika and explained that Mr. Rizika would like to put a roof over his patio; they meet the setbacks but they are here to ask for a variance because they exceed lot coverage. Because it is an existing lot they are under about 2,000 s/f. They will be coving about 37% of the lot, the maximum is 30%. The building inspector told them that there are no provisions in the by-laws regarding covered patios. There will be no walls, just a roof; there is a chimney for the fireplace that will not be in the roof. Upon a motion by Ken Perro, and seconded by Harold Proodian, the Board voted unanimously to close the public hearing.

A motion was made by Harold Proodian, and seconded by Ken Perro, to grant the Special Permit to Dan Rizika, 18 Manor Road to construct a 24' x 24' pavilion over an existing patio for the purpose of outdoor use and to exceed the 30% maximum lot coverage to 37%.

Board members voted unanimously to approve the requested Special Permit.

Chairman Paul Nigosian explained that there are 21 days waiting period for anyone to appeal the decision and you will be notified by the Town Clerk's office.

VI. 221 Southwest Cutoff, Millbury, MA (Map 5, Parcel 62)

Petitioner: Dominic Murgo, PJM Family Enterprises

Purpose: a variance for the purpose of construction and trucking lot. Zoning Suburban IV & Aquifer Protection District A.

Attorney Peter Keenan spoke on behalf of the Murgo family; the petitioner is PJM Family Enterprises. This relates to property situated at 221 Southwest Cutoff; the parcel in Millbury, Map 5, Parcel 62. He presented an environmental analysis performed by CMG of the area and the remediation of the area that was done at the time of purchase of the property. See attached memorandum of behalf of the petitioner*. This request comes because of a cease and desist from the building inspector that the zoning does not allow the present use. Attorney Keenan believes that there is a pre-existing non-conforming use since 1973; it has been for this use without interruption for 42 years. He presented photos that were taken from 1938, 1952, 1970 and 1985 showing the growth of industrial trucking use of this parcel of land. Attorney Keenan presented reports and findings regarding the parcel. The law says that the property has to be abandoned for two years to rezone the area that has been pre-existing non-conforming use.

Francis Mercandante of Park Hill Ave, Millbury said that he has been in the Route 20 since 1961 and the area has always been used for construction vehicles and trucking.

Paul DiCicco of Bella Rosa Drive, spoke saying that Dominic Murgo was a good neighbor to Millbury.

E. Bernard Plante of Carlton Road spoke in support of Dominic Murgo saying that he is a hard -working, honest and high integrity type person, they have worked very hard the American way to build their business. He encouraged them to come to Millbury.

Steven Madous of Mirick O'Connell spoke for the abutter, Mr. Bidrosian regarding the zoning matter. They relied on the zoning maps of the town to purchase 63 acres of land that is zoned for residential use to build a 98 lot subdivision. Town Meeting has spoken regarding this area being residential. We believe there was abandonment in the use of the pre-existing non-conforming issue or at least a lapse. This current use is not protected as there was not a special permit for the current use. When it was a storage yard, it was not a trucking yard. The building inspector agreed with our interpretation. He also said that it was not properly noticed or applied for. They have missed the 30 day appeal process for appealing the building inspector's zoning decision.

Chairman Nigosian said that the application for appeal was filed in the Clerk's office on December 22, 2014; the hearing was scheduled for January but had to reschedule due to weather, they are within their procedure rights.

Chairman Nigosian asked when the area was used as a storage yard. Attorney Madous said that the storage yard was a much quieter operation and the pre-existing use was abandoned; now vehicles that haul trash are is a much different operation. They applied for a variance, not an appeal of the building inspector's decision.

It appears that they put in for a Variance or the appeal of the building inspector's decision by Dominic Murgo per the instruction of the building inspector asking for a determination for a pre-existing, non-conforming use. Attorney Keenan then filed an Amendment to clarify what they were looking to do. This was never used as a storage yard exclusively; it was always a trucking company. Chairman Nigosian asked if they was always hauling material like this. Mr. Murgo said that the previous business was a seasonal businesses; busier in the spring and summer months but tractor trailers coming in and out. They want to stay in business and work with the abutters to create a buffer zone. Chairman Nigosian suggested waiting until they get a determination from our lawyers regarding proper notice of the matter.

Attorney Keenan said that if it is a non-conforming pre-existing use then no variance is necessary and therefore a decision should be made. Attorney Madous said that he did not receive any supplemental filings.

Upon a motion by Ken Perro, and seconded by Harold Proodian, the Board voted unanimously to close the public hearing.

Ken Perro said that there is a history there for the Route 20 activity; it's always been a trucking area. The Board members all agreed that this is what the area was always used for.

Motion made by Harold Proodian, seconded by Ken Perro to grant the use of the property as listed on Map 5; Parcel 62 for PJM Family Enterprises, LLC, 221 Southwest Cutoff, Worcester, located in the Aquifer Protection District

A as per Millbury Zoning Bylaws and Suburban IV, to continue their trucking operation it is a continuation of the grandfathered preexisting, non-conforming use of the property and may be continued as a matter of right.
The Board voted 4 -1 (Paul Nigosian opposed)

IV. Elect Board of Appeals Vice Chairperson

Harold Proodian nominated Robert Simmarano as Vice Chairman, seconded by Ken Perro.

Board voted unanimously.

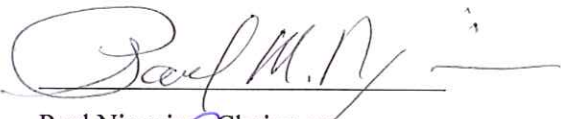
Harold Proodian nominated Ken Perro as Clerk, seconded by Robert Simmarano.

Board voted unanimously.

VI. Adjournment

Motion to adjourn by Harold Proodian at 9:00 pm, motion carried unanimously.

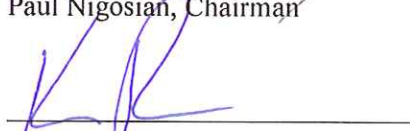
Respectfully submitted by Tish Hayes, submitted to Town Clerk on: 3/10/2015



Paul Nigosian, Chairman



Robert Simmarano, Vice Chairman



Ken Perro, Clerk



Harold Proodian



Daniel Mezynsky



Anna Lewandowski, Alternate