



Approved 7/23/13

**Zoning Board of Appeals
Executive Session Minutes
May 14, 2013**

Members in attendance: Richard Rand, Chairman; Richard Kane; Robert Berger; Brad Blanchette, Alternate; Jeffrey Cayer, Alternate

Others in attendance: Kathy Joubert, Town Planner; Attorney Katherine Doyle, Town Counsel; Elaine Rowe, Board Secretary; Fred Lonardo, Building Inspector

Chairman Rand called the meeting to order at 6:30PM.

Members of the board agreed to enter into Executive Session pursuant to M.G.L., Chapter 30A, Section 21, Subsection 3 (litigation) due to the Chair's determination that a discussion regarding this matter in an open meeting may have a detrimental effect on the position of the Board.

Richard Kane made a motion to enter into Executive Session. Brad Blanchette seconded. Results of the roll call vote are as follows:

Richard Rand, Chairman, voted in the affirmative
Richard Kane voted in the affirmative
Robert Berger voted in the affirmative
Brad Blanchette voted in the affirmative
Jeffrey Cayer voted in the affirmative

Chairman Rand indicated the board's intent to return to open session at the conclusion of Executive Session.

Ms. Joubert noted that Fran Bakstran and Mark Rutan were not available to attend tonight's meeting.

Attorney Kay Doyle explained that the town was approached by the attorney for the applicant for the project at 15 Pinehaven Drive and 276 West Main Street who was recently denied a special permit by this board. She noted that the applicant proposed to demolish an existing house, combine two lots, re-subdivide, and construct two duplexes on the newly created lots. She stated that the board's vote of 3 in favor and 2 opposed resulted in a denial of the project because a super majority vote is required. Attorney Doyle explained that the applicant had not brought his attorney to the hearing, and he now believes that was a mistake so he is essentially requesting a do-over in hopes of avoiding litigation. The applicant believes that his attorney can bring forth a better presentation of the project than what was originally presented. Mr. Cayer agreed that he would be open to re-hearing the proposal since he did not believe that the applicant had made a good case to enable him to support the project.

Attorney Doyle explained that the same members who heard the case originally must hear it again if they are still serving on the board. She also noted that the applicant will need to agree to bear the costs of notifying the abutters.

Ms. Joubert asked if the town needs to have the applicant file a new application or simply re-open the existing case. Attorney Doyle explained that if the board votes to remand, the court will order the case back to the board. She also commented that there is very little risk to allowing the remand, but that moving forward without a remand would put the board at risk.

Chairman Rand suggested that the members vote to remand the matter back to the board. Members of the board agreed.

The results of a roll call vote on remanding the case back to the board were as follows:

- Richard Rand, Chairman, voted in the affirmative
- Richard Kane voted in the affirmative
- Robert Berger voted in the affirmative
- Brad Blanchette voted in the affirmative
- Jeffrey Cayer voted in the affirmative

Attorney Doyle agreed to contact the applicant's attorney to propose a remand provided that they will agree to bear the cost of re-noticing abutters.

Ms. Joubert asked Attorney Doyle about the status of the case for 130 Main Street. Attorney Doyle noted that there was not much to report. She stated that the deposition of the Police Chief was fairly damaging to the applicant because the Chief testified about the dangerous conditions at the intersection. She explained that the attorneys have discussed settlement, which comes down to compensation for property owners and some planned modifications to the development, but there has been very little movement on the settlement proposal.

Attorney Doyle explained that a pretrial conference is scheduled for June, but that Town Counsel will not actively present a defense at that time because it is not in the town's best interest to do so. She also commented that the court had originally ordered that board members be deposed, but they have yet to do so and are quickly running out of time. Attorney Doyle noted that the Police Chief had voiced his opinion that adding more traffic to the intersection without getting relief from the state in the form of a traffic signal would be negative. She offered to provide a copy of the transcript of the Police Chief's deposition. Chairman Rand expressed a desire to see the transcript. Ms. Joubert asked if it is appropriate for the transcript to be seen by board members. Attorney Doyle stated that the transcript does not disclose any litigation strategy, so she has no concerns about doing so.

Richard Kane made a motion to close Executive Session and return to open session. Robert Berger seconded. Results of the roll call vote are as follows:

- Richard Rand, Chairman, voted in the affirmative
- Richard Kane voted in the affirmative
- Robert Berger voted in the affirmative
- Brad Blanchette voted in the affirmative

Jeffrey Cayer voted in the affirmative

Executive Session concluded at 7:00PM and the board returned to open session.

Respectfully submitted,

Elaine Rowe
Board Secretary