



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
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MINUTES
APRIL 25, 2017

Attending the meeting held at 7pm in the Senior Center Room in Wayland Town Building located at 41 Cochituate Rd. Wayland, were members Eric Goldberg, Chair, Aida Gennis, Thomas White, Jonathan Sachs and Associate Members Jason Drori, Shaunt Sarian, and Linda Segal. Town Counsel Amy Kwesell (KP Law), and Building Commissioner Geoff Larsen, were also in attendance. Liz Reef was in attendance to take the minutes. Audio and Video recorded by WayCAM.

Public Comment: David Lang, of 38 East Plain St, questions how he can have confidence in Town Government especially regarding what's gone on with 150 Main St.

Eric reads the legal description for Case #17-06:

Application of **Gretchen Dresens** for an appeal of Permit #B20170104 issued by the Town's Building Department for the demolition of an existing structure commonly known as the former Finnerty's restaurant, pursuant to M.G.L. Chapter 40A, Sections 8 and 15, with regard to the property owned by Washington Street Business Center LLC (formerly owned by 150 Main Street LLC), located at **150 Main Street** in Wayland and in the Business District A and the R20 Residential Zoning District, as shown on Assessors Map 51B, Parcel 073. **Case #17-06**

Panel: Eric, Aida, Thomas, Jason, Shaunt, Linda. Eric will write decision with assistance of Town Counsel.

Attorney for Ms. Dresens, Len Davidson, speaks. He talks about the recorded restrictive covenant. Eric says we're here to hear an appeal of a demolition permit. Davidson says Wayland says that upon denial or issuance of any required building permits any person aggrieved by a decision may appeal the site plan decision of the Planning Board through the ZBA. Eric says if the issues were addressed in conjunction with an appeal of the first building permit, and that was not appealed, so the correctness of the Boards decision is now final, does an applicant or anyone have the opportunity to come at the site plan again or is this a Gallavan situation. Davidson says that in the Wayland By-Laws you have the right to challenge a site plan every time a building permit is issued.

Charles Le Ray, attorney for 150 Main St. LLC, says that Davidson left out a key part of By-Laws pursuant to M.G.L. Chapter 40A, Section 8. He says Wayland By-Law says you can only bring an appeal that is allowed under Section 8, and Section 8 says you have to have a zoning violation. He says the issuance of a demolition permit or a building permit to demolish, does not violate 40A and does not create a zoning violation.

Eric asks Amy, Town Counsel, if issuance of a demolition permit means another chance to appeal site plan approval. Amy says another interpretation of Wayland By-Law is that you need a nexus and there isn't a nexus here. She said a nexus would have been between the first building permit and site

plan approval, not between the demolition permit and site plan in this instance.

Eric opens up hearing to public comment on the restrictive covenant or appeal of demolition permit.

Linda Segal asks about the restrictive covenant filed at the Registry of Deeds. LeRay said (prior) Town Counsel Mark Lanza agreed in email to the wording. Segal asked to see that written exchange.

Molly Upton, 23B Bayfield Rd., asked the Board to check the date on that email exchange about the restrictive covenant.

Jean Pratt, of 6 Greenway, says she's a former ZBA board member. She asks the Board if anyone has visited the site and how they can allow this with all the traffic that will occur. She expressed dismay over the changes in the bylaw making it unreadable except by attorneys.

Davidson speaks about sidewalks and brings up safety issue. He said the site plan does not comply with Wayland's zoning bylaw regarding sidewalks. Amy says Planning Board made discretionary decision regarding sidewalks because they said CVS is retail. Linda says the fence is over the sidewalk so is that safe. She said the public can't walk on that sidewalk because of fence.

Le Ray says Dresens doesn't have right to appeal the demolition permit and therefore she can't appeal the site plan. Le Ray says the Board doesn't have jurisdiction because Dresens doesn't have standing. Shaunt asks Amy if the Board has jurisdiction. Amy says yes, that at this point, the Board has jurisdiction to hear Dresens appeal of demolition permit.

Judy Bennett, of 66 Hawthorne Rd, asks if West Plain Street is a scenic road, then isn't there supposed to be greenery. Eric says that will be addressed later.

Davidson speaks about the curb appeal and screening and objects to the tight fence. He says this is designated Scenic Road. He says Gretchen Dresens is a party of interest and she is individually aggrieved.

Gretchen shows the Board photos of her house and view, plus loading trucks that go into the CVS on route 20. She says the headlights of trucks and cars absolutely will individualized aggrieve her.

Steve Hage, of 14 King St, says without all the parking built out, there will be extra land which he fears could be redeveloped later.

Eric says if the reserved parking isn't developed or needed then that area can be more substantially screened for the benefit of Ms. Dresens and the public.

Le Ray says the landscaping plan shows 20 feet of screening from Main Street toward the parking lot except as you approach Ms. Dresens property where it increases to 62.

Eric asks if that screening will be provided if those banked spaces aren't developed. Le Ray says yes, but if Ms. Dresens succeeds in enforcing the bylaw so those spaces have to be built, then there won't be landscaping in those spaces.

Eric asks if anyone present actually seeks to enforce that the additional spaces be built? Le Ray says there is a bit of a discussion going on with the Building Commissioner.

Eric says one concern was the Planning Board erred by reserving parking spaces without the issuance of a special permit. It's incorrect, if not unlawful. He explained that the reserved parking spaces without a special permit is contrary to zoning. It's a bit of a catch 22. On the one hand folks want this handled correctly, within the constraints of the By-Law, but really nobody wants these spaces to be built.

Le Ray says everyone would prefer less parking because less parking would mean more landscaping. Eric asks how is it now at this point these spaces are going to be built. Eric says the site plan approval as it exists with the reserved parking, the one of record, is the one that controls.

Amy says the Planning Board's condition would still apply so that wouldn't alleviate Ms. Dresens concerns. She says the building department and the ZBA are stuck in the middle and something has to be done because no one wants the extra parking. She says something has to be done formally, whether it be a modification of the site plan approval, or whether it be an actual special permit. Davidson says the laws are not being observed.

Eric says we've identified some areas that can be resolved. He encourages the attorneys for both parties to communicate and do something productive before the Board reconvenes to continue hearing this case. LeRay agrees to take issues back to acquisition counsel because he is not authorized to act on behalf of the new property owners.

Eric continues the case until May 11, 2017 at 7pm. He has attorney Davidson sign an extension form.

Documents submitted with application: Exhibits 1-13 from Dresens.

Documents submitted by Attorney LeRay: An opposition letter to Ms. Dresens' appeal dated April 18, 2017 with Exhibits 1-18.

Eric reads the legal description for Case #17-03:

5 Sycamore Road – Mokema Realty LLC

Application of **Mokema Realty LLC** for any necessary approvals, findings, special permits and/or variances as may be required in order to construct a proposed vertical 2nd story addition with renovations to a preexisting non-conforming single family structure on a pre-existing, non-conforming lot (lack of frontage and square footage) that is less than 30 feet from the front yard property line and less than 55' from the centerline of the right of way that also changes (increases) the existing gross floor living area by more than 20% under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 104.2, 201, 203, 401.1.2, 401.1.3, 401.1.3.2, 401.1.6, Article 8 and Article 16. The property is located at **5 Sycamore Road** which is in a R-20 Single Residence District and the Aquifer Protection District. **Case #17-03** (cont'd from 4/11/17)

Panel: Eric, Aida, Thomas, Shaunt, and Linda. Thomas will write the decision.

Eric says the hearing was continued so the Board could do a site visit on April 21st. The Board also went into Judy Bennett's house, an abutter who has concerns about this project, in order to view what she had described

Lucine Seifel, the applicant, provides the Board with a handout that addresses Judy Bennett's concerns.

Judy Bennett, of 66 Hawthorne Road, provides the Board with a handout and asks that they consider not granting the special permit. She says it's a high density area and the proposed height would give it an

urban feel and that's not why people live in this town. She said her views would be negatively affected from October to April, adding that documents submitted by the applicant do not show clear height measurements.

Molly Upton, of 23B Bayfield Rd., says she can see the house from her house so she wants the Board to know that these proposed additions affect other areas in town too.

Alice Boelter, of 106 Lakeshore Drive, reads letter she first submitted in March regarding this case. She urges the Board to have the Planning Board look at Zoning By-Laws so houses don't go from two bedrooms to three bedrooms. She said submitted plans are insufficient, e.g. not showing where septic will be.

Shaunt asked about lowering the roof pitch, having no attic access, just insulation. Applicant, Kurt Seifel, says yes.

Linda asked what would be done to address the safety of rotted stairs and was told it is not part of the application.

Eric talks about the view from abutters' houses since he says that's what is paramount here given the abutters' concerns. Eric says upon his review of the By-Laws, he doesn't see a provision about views. Eric says adding a 2nd story floor is not inherently problematic.

Judy Bennett added that other expanded homes are also out of character and this proposal would be substantially more detrimental.

Shaunt says he thinks it's a modest addition and the effect on the neighbor's view is minimal in his opinion. Linda says she doesn't feel comfortable with the project with the plans as submitted because we cannot be sure how it really will turn out. Plans are not precise enough.

Thom modifies sketch so roofline is two feet lower. Total height measured from the sill plate will not exceed 23 feet. Kurt Seifel signs and dates modified sketch.

Eric moves to grant special permit, Aida seconds. Voted approved 4-1(Segal voted no).

Documents submitted with application: Certified Plot Plan by Paul Josephson dated 5/13/16, Existing and Proposed Floor Plan, Photographs of Exterior of House.

Documents submitted at hearing by applicant: 4 page handout titled Reply to concerns of Judy Bennett, with narrative and photographs, dated 4/25/17.

Documents submitted by abutter Judy Bennett: 5 page handout titled Reasons to not approve the Proposed Variances for 5 Sycamore Road, with narrative, maps, and photographs, dated 4/4/17.

Eric reads the legal description for Case #17-04:

5 Crest Road – Paul and Leslie Morette

Application of **Paul and Leslie Morette** for any necessary approvals, findings, special permits and/or variances as may be required in order to remove an existing single family dwelling and reconstruct a single family dwelling on a pre-existing, non-conforming lot (lack of square footage) that is less than 30 feet from the front yard property line and less than 55' from the centerline of the right of way that also changes (increases) the existing gross floor living area

by more than 20% under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 104.2, 201, 203, 401.1.2, 401.1.3, 401.1.3.2, 401.1.6, and Articles 8 and 16. The property is located at **5 CREST ROAD** which is in a R-20 Single Residence District and Aquifer Protection District. **Case #17-04** (cont'd from 4/11/17)

Panel: Eric, Aida, Thomas, Shaunt, and Linda. Aida will write the decision.

Eric says the hearing was continued so the Board could do a site visit on April 21st.

Applicant, Paul Morette, submits pictures of proposed structure to the Board. Aida confirms proposed height of 27.5 feet. Applicant says yes. Applicant says minimal trees will come down.

Eric finds that the existing house meets the standard for demolition.

Eric moves to grant special permit to demolish existing structure and to build proposed structure. Thom seconds, Voted approved 5-0.

Documents submitted with application: Certified Proposed Septic System by William Murphy dated 12/22/16, Existing Conditions Plan by The Jillson Company dated 10/6/16, Conceptual Plot Plan by The Jillson Company dated 11/22/16, Concept Development Plans Foundation & Elevations dated 10/25/16 & 10/15/16, Concept Development Plans Option B dated November 1, 2016, Proposed Residence Plan by Mark S. McCarthy Integra Construction & Development dated 12/20/16.

Meeting adjourned at 10:55 p.m.

June 27, 2017

Date Minutes Approved



Prepared by: Liz Reef