

Minutes of the Meeting
And
Public Hearings on the Petitions of
1) Freedom Worship Center – Administrative Appeal 2) Ned & Mary Barakat
3) Gerardo Sali 4) Wal-Mart and 5) Continuation on Deliberation for FWC Charitable Enterprise
40-B Franklin Street

October 30, 2006

Present: Matthew Colangelo, Chairman, Charles C. Witkus, Clerk, Barbara M. Deschenes, and Associate Members Paul W. Hennessey and Linda Ann Isgro

Delayed: Philippe W. Chevalier, Vice Chairman

Mr. Colangelo called the meeting to order at 7:15pm. He introduced Board Members and explained the public hearing procedure. There were sixteen signatures on the sign-in sheet.

Freedom Worship Center

Mr. Colangelo read a letter from Bowditch and Dewey requesting a continuance to December 14th for an administrative appeal to appeal a decision of the planning board. Ms. Deschenes made the motion. Mr. Hennessey 2nd the motion. All in favor.

Ned and Mary Barakat

Mr. Colangelo read a letter from the Barakats requesting a withdrawal without prejudice for an accessory apartment special permit as they received a building permit based on a multi-family dwelling in a general residence zone. Mr. Hennessey made motion to withdraw. Ms. Isgro 2nd the motion. All in favor, carried to withdraw.

Gerardo Sali

Mr. Colangelo stated he had a request for a continuance to December 14th for the variance application as the drawing plans are not ready. Mr. Hennessey made the motion to continue. Ms. Isgro 2nd the motion. All in favor.

Mr. Colangelo stated that the intent was to deliberate on the Franklin Street 40-B, however Mr. Chevalier was running late, therefore the order was changed since the petitioners were there for Wal-Mart.

Wal-Mart continuation of Special Permit Public Hearing

Mr. Colangelo introduced the board, read the petition into the minutes and explained the process of the hearing. Wal-Mart is seeking a special permit to open the store each year at 5 am on Friday after Thanksgiving due to hardship.

Mr. Steve Ashby, Store Manager: Stated that he is requesting the permit rather than apply on a yearly basis. He has been manager since September 15th of 2006 and requests a special permit to open one (1) hour earlier.

Mr. Colangelo: confirmed hire date and asked if he was aware of the numerous complaints.

Mr. Ashby: he was familiar with the situation.

Mr. Colangelo: have all the issues been addressed?

Mr. Ashby: the container had been removed, the trash is cleaned up daily and feels comfortable that the noise ordinance has been addressed.

Mr. Colangelo asked if there were any questions from the board.

Ms. Isgro: When did the clean-up start?

Mr. Ashby: approximately 1 week after hire date, during the process of remodeling.

Ms. Isgro: it was her understanding that the clean-up happened just a week or two ago.

Mr. Hennessey: he understood there was a management turnover but expressed concern of forklifts running at 11pm, 5:30 am, and at 6 am, and requested that Mr. Ashby be more diligent with taking care of the noise and nonsense.

Mr. Ashby: he had not been made aware of the issues. He wants to be a good neighbor and will resolve any issues should they arise.

Mr. Colangelo: If you were to open Friday after Thanksgiving, how would you keep the public quiet?

Mr. Ashby: Hire police for crowd control as has been in the past.

Mr. Colangelo asked about the lights being on for 24 hours and Mrs. Ashby stated that they have shields on them and can be overridden.

Ms. Deschenes stated that she'd like an opportunity to look over order of conditions for the permit and asked if Mr. Ashby had seen the order of conditions.

Mr. Ashby: said he didn't understand but has reviewed rules and regulations.

Mr. Colangelo asked if there were any other questions from the board and proceeded to read a letter from the West Boylston Police Department re: Black Friday. He then opened the meeting to the public.

Ms. Sandra Loftus: questioned a complaint about a container just a couple of weeks ago.

Mr. Ashby: Didn't recall, only spoke with the town administrator.

Mr. Bruce Bjorkland: neighbor stated that he was upset after he spoke with a manager in regards to the container, and the manager was cocky, claiming he had a permit.

Mr. Ashby: he has had no conversation with anyone regarding a container and does not know who that could have been.

Ms. Susan Rinaud: Manager should abide by rules and regulations. The first year was excellent, but the history shows otherwise. She passed out photos and asked why they should open at 5 am and not 6 am.

Ms. Amy McDonald expressed the same concerns and stated that there would be no guarantee that the issues would be addressed.

Mr. Colangelo: Spoke with Town Counsel regarding enforcement issues. ZBA doesn't have the right to enforce but the building inspector does, as he can issue a cease and desist order. Mr. Colangelo also noted that once a special permit is granted it cannot be revoked. Only stopped until applicant is in compliance. He advised the neighbors to document all issues to the Building Inspector and copy the ZBA and Mr. Ashby. He also requested written notification in any change of management to the West Boylston Police Department as well as the ZBA should a permit be granted.

Ms. Isgro: Prefers not to grant yearly permit and have Wal-Mart come back next year to make sure issues have been resolved.

Mr. Ashby said he understood and requested to be contacted directly should any issues arise.

Ms. Loftus questioned the complaints in writing process. Mr. Colangelo explained in compliance or non-compliance which will become an enforcement issue. If they are found in non-compliance, they will be fined.

Ms. Rinaud: A special permit had been issued, but they had never been fined. She referred to a letter dated 2001 by Wal-Mart attorney and stated that 5am would not be beneficial.

Ms. MacDonald complained of noise and loud drilling.

Mr. Ashby said he wasn't aware but would look into it and respond. He stated that everyone is aware of regulations.

Ms. Deschenes: suggested that the neighbors and all Wal-Mart managers gather for round table.

Ms. Loftus: time away from my family, tired of storage containers, trash must have lids, forklifts running all day, pallets in back should be relocated; intent was not to hear sounds while enjoying the outdoors.

Mr. Delmar Shirull: The pallets had been there for numerous years. When they added docks, the fire chief requested they be moved due to fire hazard.

Mr. Ashby: Pallets are picked up every Friday to avoid congestion

Ms. Loftus suggested they go around thru the parking lot with the forklifts.

Mr. Hennessey: the matter is the retail opening at 5am – that hour is worth \$20,000.

Mr. Colangelo: Last year Black Friday was a problem due to 6am opening, whereas other stores are open at 5am.

Mr. Witkus: simple solution would be to get a quiet forklift.

Ms. Isgro: suggested 1 year basis due to management changes.

Mr. Colangelo closed the public testimony at 8:15pm.

Discussion between the board: Mr. Witkus wants forklift quieter; Ms. Isgro would like a special permit to open at 5am but not every year.

Ms. Deschenes moved to grant a special permit to Wal-Mart for 2006 with the following:

- Notification of change in management;
- Quieter forklift;
- All conditions of prior special permit.

Ms. Isgro 2nd the motion, Mr. Hennessey disagreed with the forklift stipulation, role call – all voted yes with the exception of Mr. Chevalier who was still running late).

FWC Charitable Enterprises Franklin Street 40-B

Mr. Chevalier arrived and the deliberations began at 8:25 pm. Mr. Colangelo requested any changes or additional questions on latest draft of the comprehensive permit document.

Discussion between Ms. Isgro and Mr. Colangelo stating there were no changes from 6/1/06 to count housing inventory. Legal Counsel had questioned the comprehensive permit for Afra not being counted or credited as of yet but once the documents have been accepted then you can claim that threshold.

Mr. Hennessey: 40-B is 100% compared to the others that are only a percentage.

Ms. Isgro: technically we can keep adding and not be updated for a year; it's a matter of language being accurate, the same argument as when you reach your 10%.

There was a discussion Re: DHCD; conferred with town counsel (Sharon) for clarification.

Ms. Isgro made motion to amend.

Mr. Colangelo: Vote from Board Re: Page 5 (3.4). Housing inventory approved additional meeting minimum requirements.

Mr. Witkus 2nd the motion. Mr. Colangelo stated that Mr. Witkus was not able to vote due to missing a meeting (without notice to neighbors).

Mr. Hennessey 2nd the motion. Motion does not carry.

Discussion of voting members - Charlie and Paul. Ms. Isgro questioned why Mr. Witkus was not allowed to vote and Mr. Hennessey was. Ms. Isgro claimed that Mr. Witkus missed the first meeting which was not opened because of improper notification. Ms. Isgro stated that the hearing was then opened at next meeting and Mr. Hennessey missed an important meeting. Mr. Colangelo stated that although there was an improper notification, the hearing was continued and proper notification was given to correct abutters list and reviewed in full again at next hearing to bring abutters up to speed. According to open meeting law, members cannot miss one public hearing. Counsels' opinion was asked, Ms. Deschenes suggested in previous minutes. Ms. Ramonas checked minutes and Mr. Witkus missed first two meetings.

Mr. Witkus: stated once again to reduce the amount of units; we need the growth.

Mr. Chevalier: Referring to the Decision documents, all changes have been made from what has been discussed.

Mr. Witkus: reduce the units to 16, not 28. The playground is good, install granite curbing to make the entrance look nicer. Also the earth removal should not be in our hands.

Mr. Hennessey: stipulate that they meet all requirements.

Ms. Isgro: Expressed that she has 2 wishes: Historical site condition – consideration given to the environmental issues, along with additional 100' to buffer zone. Watershed protection act does apply to the site and she understands that a lot of buildable area will be in violation. Refer to AFRA regarding the Indian burial ground. There are concerns that that conservation would be viewed as a separate process.

Mr. Chevalier move to grant the comprehensive permit. Mr. Hennessey 2nd the motion.

Ms. Isgro requested for Mr. Chevalier to recuse himself for voting stating that she had seen Mr. Chevalier and Mr. Evangelista having a private meeting. Mr. Chevalier asked Mr. Evangelista to state what was said in the hallway and Mr. Evangelista stood and stated that the discussion pertained to the town meeting.

Vote was called: Ms. Isgro abstained. Ms. Deschenes voted yes, Mr. Chevalier voted yes, Mr. Hennessey voted yes, Mr. Colangelo voted yes. Motion carried. Meeting adjourned at 9:30 pm.

Respectfully submitted:

Donna Jean Ramonas, Secretary

Matthew P. Colangelo, Chairman

Phillippe W. Chevalier, Vice Chairman

Charles C. Witkus, Clerk

Barbara M. Deschenes

Paul W. Hennessey, Associate Member

Minutes accepted on _____