



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

127 Hartwell Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

August 23, 2012

Chairman: Philippe Chevalier

Members Present: Matthew Colangelo, Barbara Deschenes, Linda Isgro, and Charles Witkus

Others Present: Stephen Hart (Associate Member), and Secretary Toby Goldstein

The meeting was called to order at 7:02 p.m. Mr. Chevalier called a recess so that members could read through documents submitted by Mr. Chevalier that pertained to the 2nd Public Hearing taking place that evening.

Public Hearing, Wachusett Realty LLC (Clinton Savings Bank), Application for Special Permit:

Mr. Chevalier opened the Public Hearing at 7:15 p.m., and read the Public Hearing notice, and outlined the hearing procedure. He introduced the members of the Board (Mr. Hart will be voting. Mr. Colangelo will recuse himself due to a conflict).

Christian Klein of Approach Architects, Rob Oliva of David Ross Associates, and Michael Tenaglia of Clinton Savings Bank represented the applicants. The representatives informed the board that the bank currently occupies 231 West Boylston Street, and is seeking to move to 306 West Boylston Street (the former Friendly's), where they would like to renovate the building and construct a separate structure in the back for a drive-up ATM and teller window. It is an odd-shape, with considerable slope. The backside of the building is not wide enough for regular traffic with the abutting homes to move through. If built on the right side of the building, there would be queueing behind the building. The applicants propose that they would have 24 parking spaces (code requires 18).

There would be parking on the right side for customers, on the left side for staff. They propose a loop and small kiosk and two islands with pneumatic tubes. The Conservation Commission has already issued a Negative Determination to the applicants, and DCR has had no comment on the issue. The Planning Board had some comments at their September 12 Public Hearing.

There have also been no objections from the Town police, Board of Health, and Building Inspector.

There were some questions for the representatives from Zoning Board of Appeals members. Ms. Isgro asked Mr. Oliva to repeat his information regarding Planning Board comments. Mr. Oliva stated that the Planning Board was not comfortable with closing the Public Hearing due to revisions made by the applicants. There are presently no drainage structures on the site. The applicants will reduce the impervious area to reduce runoff. They are also proposing other measures such as rain gardens. In addition, they will remove 4 parking spaces, and add 4 to the island in the loop. Ms. Isgro added that, if these 4 spaces were removed, there would still be enough spaces according to parking law bylaw. Mr. Oliva agreed. Mr. Chevalier asked if Site Plan Review will take place, and Mr. Oliva said that it would. He also said that they estimated that the space could accommodate 3 lines of customers, with 3 customers per line, at any one time. Mr. Tenaglia added that they would be comfortable with 3 to 5 customers at one time at the ATM and teller. Mr. Chevalier asked him if there would be interaction between teller and customer, and he replied that they will be able to see each other by video.

Mr. Chevalier asked if there were any additional questions or comments from the audience or the representatives, and hearing none, Mr. Chevalier closed the public portion of the public hearing. At that point, the Board members deliberated. Mr. Hart questioned if the amount of staffing should agree with the volume of traffic. Ms. Isgro thought that the proposed set-up is favorable to the functionality of the drive-up, and that it would not impact the impervious surface as much as the current situation because they will reduce impervious surface.

Ms. Isgro motioned to issue the Special Permit to Wachusett Realty LLC, according to submitted Plan L-11855A, dated 7/5/2012. Subject to revision, once approved by Planning Board Site Plan Review. Ms. Deschenes seconded. The vote took place as follows:

Mr. Witkus – Yes

Ms. Deschenes – Yes

Mr. Chevalier – Yes

Ms. Isgro - Yes

Mr. Hart – Yes

**Public Hearing, Douglas Q. Meystre and Diane S. Meystre Et Al, 68 Newton Street,
Administrative Appeal:**

After a brief recess, Mr. Chevalier opened the Public Hearing and read the Public Hearing notice, and outlined the hearing procedure. He introduced the members of the Board. Mr.

Colangelo will now be voting. Mr. Chevalier stated that the street address of the applicant was listed in error as 65 Goodale Street in the letter sent to the abutters. Mr. Chevalier stated that the applicant's street address is not a notice requirement, but was listed correctly in the advertisement and the posting. The subject of the appeal was listed correctly as 68 Newton Street. He also discussed the format of the Administrative Appeal with all present. The Board would hear the testimony of the applicants, with an opportunity for the property owner and Building Inspector, Mark Brodeur, to respond. After questions and comments from the audience and other Town officials, the Board will make a decision based on the appeal. Two questions need to be addressed, one being is the appeal timely, and second, if the laws regarding pre-existing, non-conforming property use apply to the second building on the property, which is the structure in question in this appeal.

The first representative was Chris Olson, 74 Newton Street, one of the petitioners. He discussed how he attempted to obtain an enforcement action according to 3.2B of the Zoning Bylaws (for single residence) against the accessory structure mentioned above, but could not obtain it. He appealed that decision, filed on June 27, 2012, within 30 days of the Building Inspector's letter refusing the enforcement action. In this letter, Mr. Brodeur stated that the Building Permit was issued for that structure in September of 2011, and if there was any issue with that, it should have been brought up at that time. Mr. Olson said that the issue is not of appealing the issuance of the Building Permit, but of the use of the accessory structure. He feels that the appeal is timely, being within 30 days of Mr. Brodeur's response, and also that the law in Massachusetts states that parties must have notice of the Building Permit being issued. Mr. Brodeur countered that the notice was in the window and construction vehicles were present at the structure, but Mr. Olson disagrees that this constitutes a notice of a Building Permit.

The second issue involving question of non-conforming use, is that Mr. Brodeur is of the belief that the structure and its use is "grandfathered" into pre-existing, non-conforming use as a dwelling. To the best of his knowledge, the structure was built in the early 1900's, and previous owners allowed relatives to live in this accessory structure. Mr. Olson believes that Mr. Brodeur has failed to prove this, and is prepared to provide additional evidence to the contrary.

Another petitioner, Richard Footner, then spoke. He discussed some of the history of the main house and accessory structure on the property. He said that both structures were not built as dwellings. He cited a letter from Tony and Chris Drappi, stating that they spoke to a daughter of the original property owner, who said that the accessory structure was built in the 1940's. According to Mr. Footner, a stone mason built the accessory structure for himself as an artist's studio, not a dwelling. According to public record, the house was built in 1948 and the studio in 1949. In the 1960's, prior to the Zoning Bylaws being in effect, the structure was listed in the

records as a studio, and it was listed as such after 1966, when the Bylaws were in effect. There was no non-conforming use as a dwelling listed in the almost 20 years that the structure existed.

George Bernardin, of 78 Newton Street, spoke next. He discussed how, in the late 1960's, the Dumonts sold the property to the Loysens, who owned the property until 1969. He asked Mr. Loysen about the accessory structure, who said it was not used as a dwelling, due to its crudeness and lack of heat. In 1974, Mr. Bernardin bought 78 Newton Street, and saw no regular activity in the structure until after 1986, when the property was sold to the Birds. After that time, lights were used in the cottage (accessory structure) more often, and several months later, they applied for a permit to use it as a dwelling. On 3/7/1988, the ZBA denied them a request for a variance because it did not meet the requirements. The applicants did not use an argument of "pre-existing non-conforming use", only hardship, so they were denied.

The next speaker was Christopher M. Flood, of the law office of Flood and Favata, representing John Toomy and Gay Toomy, the owners of the property. Mr. Flood agreed that this was a two-step process. He agreed with Mr. Brodeur, that as of September 21, the neighbors were aware of work activity at the accessory structure. There was a building permit present. Chris Warner, the contractor, added that there were multiple trucks, and a trailer present. (A photo of the site was submitted and added to the record). There was also an excavator for digging a trench, as well as dump trucks. In their opinion, this constituted evidence that the neighbors should have known that construction was taking place. With regards to the issue of timeliness of the complaint, they felt that, 4 months after the work was completed, that it was unlikely that the neighbors still did not know what was done. Regarding the second issue of pre-existing, non-conforming use, Mr. Flood stated that the property was "grandfathered." Tax records showed two residences at the property and for many years, the Bird family had a relative living in the accessory structure.

Next, Mark Brodeur, Building Inspector, addressed the Board and audience. In his opinion, the structure was grandfathered. The building permit applied for was for renovation of an existing structure. The inspection was completed and the work completed. The building permit was issued and the 30-day appeal period passed. Lights were noticed in the window and the building permit was posted in the window. This was all evidence of what was taking place in the structure.

Mr. Chevalier then asked the Board for any questions that they might have. Ms. Isgro asked Mr. Brodeur, regarding parking vehicles outside of the structure, how is the position that the neighbors should have known about the activity in the structure supported, given that perhaps the activity was taking place in the large house? He replied that all of the activity was in the small house. Mr. Brodeur also said that the small house has always been connected to sewer.

Mr. Flood again commented that there was abundant activity in the second house. John Toomey, the current property owner, mentioned carpeting, tiling, and brick facing that was done to the structure. The building contractor, Chris Warner, mentioned that the structure was wrapped in Tyvek house wrap for a long period of time. There was also a project sign on the property, and subcontractor trucks were present. He offered to answer any questions that anyone might have also.

Ms. Isgro, addressing the photo of the cottage, mentioned that the face of it is set back from the street, and it faces the back of the large house, further questioning how obvious the activity regarding it was outwardly. Mr. Toomey pointed out that the photo was taken from the road, from Newton Street, where the traffic takes place past the property.

Nicole Olson, of 74 Newton Street, stated that Mr. Warner did approach her, saying that she should let him know if there were any issues with noise from the property. She said that he did not say what was being done, only that it was on the property.

Ms. Deschenes asked Mr. Brodeur if he notifies abutters when he issues a building permit, and he replied that he does not, it is not required under the bylaws.

Mr. Chevalier then asked for any additional questions from any of the other Town board members that attended, from abutters, and from the ZBA itself. Ms. Isgro voiced concern over having enough time to sufficiently review the materials submitted for this hearing. Mr. Chevalier discussed the possibility of continuing the hearing in order for the Board to review the information thoroughly and possibly obtain further opinions on the many issues involved. Mr. Colangelo then asked for a letter from Planning Board and Town Counsel's opinion to be entered into the record. Mr. Brodeur asked what the Planning Board comments relate to, and mentioned the fact that two of its members are abutters. Mr. Colangelo replied that the abutters recused themselves, and that the Planning Board is an interested party, as well as other abutting planning boards. He then proceeded to read the letters. According to the Planning Board, the standard of non-conforming use was not proven (which goes back to 1988, with denial to the Bird family for a permit request), and the majority felt that the owner was not compliant with zoning bylaws. (The Drappi letter mentioned previously was also entered into the record). Town Counsel cited a case in Wellesley, MA in her opinion letter. Town Counsel's opinion was that, for the question of timeliness, all of the evidence would constitute adequate notice to the abutters of the activity in the accessory structure. As for the question of pre-existing, non-conforming use, this is a use question, not a structural question.

Ms. Isgro questioned what the meaning is of adequate notice, and of when is the start of actual construction and does renovation constitute construction. Mr. Chevalier read from the Town Counsel's letter regarding "adequate notice." Counsel mentioned "Duty of Inquiry," the abutters' obligation to inquire.

Mr. Footner discussed the question of use, and how does the public know if use is being changed only by what is seen on the outside. Mr. Chevalier responded that Counsel said that the burden is on the public to inquire. Mr. Footner then asked if they need to go on to the

property and look into the windows to see what is happening, and Mr. Brodeur replied that his office receives inquiries regularly regarding work taking place in people's homes.

Mr. Flood added that the mother of the previous owners, the Birds, lived for over 20 years in the cottage. Therefore, there is no change of use.

Ms. Isgro then said that, as a friend of former owners of the property, the Dumonts, she attended parties at the cottage. In her opinion, it was not used as a habitable dwelling by the family.

Mr. Bernardin provided a chronology of ownership to the Board, to show that the Dumonts owned the property before the Loysens.

Mr. Chevalier stated that, in 1988, a request was made by the Birds for a variance, and it was denied 5 votes to 0. He read from the minutes of the meeting held in 1988. The Birds said that the accessory structure was built in 1938. For a period, the Brooks' son lived there, until 1969. Starting in 1987, families of terminally ill people stayed there. The Loysens referred to it as a guest house. According to the De Witts, someone lived there 5 months out of the year. Supposedly, the Birds' elderly mother lived there for 20 years. From this information, Mr. Chevalier speculated that one could conclude that the structure was used as a cottage, not a studio, continuously. The zoning bylaws in West Boylston started in about 1940. The restriction allowing only one habitable building on one lot started in 1974. Prior to that, there was no such restriction. Ms. Isgro then read from a copy of the bylaws, as of 1/1965, which stated that no building can be used for any other purpose except a detached single family dwelling in a single resident district.

In deciding how to proceed with the hearing, Mr. Chevalier stated that the Board has 100 days to act, from the date of application for the Administrative Appeal. Ms. Isgro mentioned that this was Day 60. Mr. Chevalier then asked for any other questions from the Board. Ms. Isgro asked the Building Inspector if there were any inquiries from anyone about the Building Permit when it was issued. He replied that there was one. Ms. Isgro then asked if the work was completed according to code, and he replied that it was all code-compliant. Ms. Deschenes asked Chris Olson if he objects to the use of the building, to which he replied yes. Ms. Isgro asked him to what he objects, and he replied, the use of a second dwelling in a single-residence district. Mr. Chevalier then asked, how could a woman live there for 20 years after a variance was denied and no one complained. Mr. Bernardin opined, that once the variance was denied, there were no more questions asked as to what Mrs. Bird was doing there, or whether or not she was living there. Mr. Chevalier asked how the neighbors could not have an issue with it, and Ms. Deschenes opined that perhaps the neighbors were not bothered by the situation. Mr. Olson submitted another case for the record, that of "81 Spooner Road LLC vs. Town of Brookline Zoning Board".

Ms. Isgro motioned to continue the Public Hearing to September 13 at 7:15 p.m. Mr. Colangelo seconded. All in favor. None opposed. Mr. Chevalier reminded the Board that a supermajority of 4 out of 5 is needed to vote at the continued hearing. Evidence added from this meeting to the record includes photos, the applicants' case law, Mr. Bernardin's chronology of ownership

of the property, tax assessor's records, and the bylaws from 1965 that were read from by Ms. Isgro.

(Mr. Chevalier then called a 2-minute recess, at 9:10 p.m. At 9:14 p.m., the meeting resumed).

Minutes of 8/16/12 Meeting:

After review by the Board, Mr. Colangelo motioned to accept the minutes as submitted, with spelling and wording corrections indicated by Board members. Ms. Deschenes seconded. All in favor, so voted.

Other Business:

Mr. Chevalier informed the Board that he sent an e-mail to Afra Terrace after the 8/16 meeting, informing them that they were allowed to change affordable Unit 46 (115 Afra Drive) to Unit 3 (6 Jasmine Drive), with conditions. They must contact the Town Administrator to be sure they are in financial compliance, and must also send a list of all 13 affordable units.

Mr. Chevalier also mentioned a letter from Pat Halpin, wanting to meet.

Next, he discussed a response from Leon Gaumond regarding a question by Ms. Isgro.

Mr. Chevalier handed out an opinion dated June, 2001 from Town Counsel, which mentioned the possibility of dividing one lot into two, and suggested that the board review it.

At 9:27 p.m., Ms. Isgro motioned to adjourn the meeting. Mr. Colangelo seconded. All in favor, so voted.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____

By: _____

