



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

March 18, 2013

Chairman: John Benson

Members Present: Jon Meindersma (Vice-Chair), Kristina Pedone

Others Present: David Femia (Associate Member), Aaron Goodale, III (Associate Member), and Secretary Toby Goldstein

Members Absent: Francis Cahill (Clerk), Charles Witkus, and Paul Hennessy (Associate Member)

(Mr. Femia sat in for Mr. Cahill on the Board as a voting member, according to Section 6.2A of bylaws).

The meeting was called to order at 7:18 p.m. by Mr. Benson. He read the names of members present and absent, and stated that Mr. Cahill would be replaced by Mr. Femia, but Mr. Witkus would not have a replacement.

Public Hearing, Town of West Boylston, Cemetery Department, Petition for Variance, Mount Vernon Cemetery:

This petition was for the applicants to erect 80 feet of 8-foot high vinyl fence at the cemetery. Petitioner was Aaron Goodale, III, who recused himself from participation on the Zoning Board for this hearing. Representatives were Mr. Goodale and John McCormick. Mr. Goodale discussed the history of this filing. The application was dated 10/3/2012, at which time Mark Brodeur, Building Inspector informed him that a fence of over 6 feet in height needed a building permit, as it is considered a structure (letter from Mr. Brodeur discussing this is on file). Mr. Benson, after review of the materials submitted by Mr. Goodale, stated that the petition was complete. He also read a letter submitted by Marc Frieden of the West Boylston Planning Board, which discussed the findings of the Planning Board that no substantial hardship was shown by the applicant, owing to circumstances relating to soil conditions, shape or topography of the lot, and this must be shown under state law. (This letter is also on file). Mr. Benson had forwarded an e-mail to Mr. Goodale, with an attachment of this letter, on 3/17/13, so that he was aware of it prior to this meeting.

Next, Mr. Benson moved to open the hearing to public comments. Mr. Meindersma seconded. All in favor. Mr. Goodale came forward, and introduced Mr. McCormick, Chairman of the Trustees of the Cemetery Dept. Mr. Benson swore in Mr. Goodale, and asked him to explain the Request for Variance. Mr. Goodale referred to an information packet, which was distributed to all Zoning Board members. Mr. Goodale explained that the desired measure of erecting the 8-foot fence is to correct a situation on the land behind the Historical Society and the Quist home, which involves Arbor Vitae trees that are damaged or growing without control. He showed the Board photos (also on file) showing out-of-control growth of the trees in width, overgrowing the lot by 6 feet, and photos of cemetery monuments that have been overtaken by tree growth. However, if sufficient trees are removed, one can see through to the property behind. Mr. Goodale also showed the Board literature describing the type of fence intended. To demonstrate the hardship factor which the Planning Board felt was not demonstrated, Mr. Goodale discussed the hardship of topography and shape of the area, including configuration of the surface, relief and position of different features. Privacy is affected by the situation. He said that 10-foot lots for each grave were necessary, instead of the 8-foot lots that exist. Showing Photos 5 and 6, he pointed out that a fence 8 feet high is needed. Regarding manmade features, mentioned in Paragraph 2 of the Planning Board letter, he feels that there was a lack of foresight in layout of the area (further discussed in a summary submitted by Mr. Goodale, also on file).

Mr. Goodale continued that a 6-foot fence is possible to have, but whatever is behind there can be seen, which includes a chicken house. He mentioned that one person with a family lot in the cemetery was willing to pay for the fence, but wants an 8-foot fence. Mr. Goodale said that they intend on attaching it directly to the white fence shown in Photo 1. He also said that the Planning Board wants him to come out 10 feet, but this would place it onto graves.

Mr. Benson asked Mr. Goodale, if they were to trim the trees on both sides, would one be able to look right through them, and Mr. Goodale replied that Arbor Vitae do not trim well, so that one would be able to see right through them. Mr. Benson reiterated, that if the trees are pruned, one would see right through trees that were meant to protect privacy. Mr. Benson asked if the chickens are completely penned, and Mr. Goodale replied that they are. He added that the dogs that roam through the cemetery would be kept away by the fence. Mr. Benson then asked if Mr. Goodale had spoken to abutters yet, to which he replied that he had not, and had spoken to someone last September, before filing, and this person (not present at this meeting) was aware of it being an 8-foot fence. Mr. Benson then asked if the style of fence had been decided, to which Mr. Goodale replied that it had not, but showed the Board a pamphlet of possible ones (also on file). They would like it to break at the top, so that the fence itself would be 6 to 7 feet, with 1 foot of broken area at the top. Mr. Benson mentioned concerns

that the fence would be aesthetically pleasing to the cemetery and neighbors, not being, for example, like a chain-link style, to which Mr. Goodale replied that it would be white vinyl, and abut to the present 4-foot picket fence, and continue until the bend at 35 feet, then continue towards the garage.

Mr. Meindersma then asked if the trees could be trimmed so that encroachment into the cemetery property is minimized; could they be trimmed so as not to be as deep but to keep the width. Mr. Goodale demonstrated, in photo 4, that the Arbor Vitae grows in 4 or 5 shoots, and is not a tree to trim, as the shoots continue to get bigger. Mr. McCormick then added that, in one of the photos, a gravestone is tipping, perhaps due to tree roots pushing it upward.

Mr. Meindersma then asked about the type of fence that would be used and how it would hold up to the weather. Mr. Goodale replied that there is quite a bit already in the cemetery, and it is of good quality, not painted or chalky, and maintained. Mr. McCormick added that it is located behind the church, and the Fire Department comes to wash it.

Mr. Meindersma and Mr. Benson then asked how old the fence is, and Mr. McCormick replied close to 15 or 16 years old. Mr. Goodale added that they will maintain it. After the last storms, they have tried hard to keep up the maintenance, but do not have as much perpetual care money coming in to them. Mr. McCormick also added that the trees are growing into the Quist property, also.

Mr. Meindersma then asked them, if it was their opinion, that trees need to come down. Mr. Goodale replied that 6-foot fence won't accomplish what they need to do. They will need an 8-foot fence to block the view. What is there now is broken, 15-foot fence.

Ms. Pedone, referring to the pamphlet given to the Board, asked if the one indicated was going to be purchased. Mr. Goodale replied that the person who offered to purchase it gave the pamphlet to them, and that it is good quality fencing. Mr. McCormick added that they only want to need to do this once.

Mr. Benson asked how close is the neighboring building near the property line, and Mr. Goodale replied that it is not even 10-feet, and the fence will solve this problem.

Mr. Femia, referring to photo 3, asked how close the gravestones are to the property line. Mr. Goodale, referring to photo 2, indicated that they are 3 feet away. There is a distance of 7 feet in front of a stone. The picket fence is on the cemetery side of the property line.

Mr. Femia then asked, when the fence is erected and the trees are removed, will the roots be addressed, and Mr. Goodale replied, before the fence is put in, the trees will be removed and the roots taken out.

Mr. Femia then asked, if some of the cemetery trees are on the Quist property, to which Mr. Goodale replied yes, that some do come out 5 feet over graves on the cemetery property.

Mr. Femia and Mr. Benson then asked about care of the fence, if the dealer would do this (Mr. Femia), or if perhaps there should be a provision to the variance that the applicants use a company with a lifetime guaranty (Mr. Benson). Mr. McCormick replied that the applicants take care of anything above ground in the cemetery. Mr. Goodale replied that the person mentioned previously will pay for the entire fence and installation. Mr. Femia asked if the applicants will supervise the work, and Mr. Goodale replied "yes." Mr. Femia also asked if the applicants would do the backhoeing and removal of the trees, and if all that the fence company would do is install the fence, to which Mr. Goodale also replied "yes."

Next, Mr. Femia asked about the time frame involved, to which Mr. Goodale replied that it would be done in the spring, probably before Memorial Day. Mr. Femia then asked what would be on the other side of the fence, to which Mr. Goodale replied that there would be enough room to park a truck. It would be 10 feet from the building to the property line. Mr. Femia also asked if the fencing would keep roaming dogs out of the cemetery, to which Mr. Goodale replied that it would.

Mr. Meindersma then asked if the Cemetery Trust feels an obligation to do this work, and in the absence of a legal obligation, do they feel committed to do this. Mr. Goodale replied that they feel obligated to solve the problem, but financially just could not do it sooner. They are trying to correct the problem that the trees have been causing.

Mr. Benson asked if there were no more questions from the Board members; there were not. Then, Mr. Meindersma moved to open the hearing to public comment. Mr. Benson seconded. All in favor. As there were no questions from the public, Mr. Meindersma moved to close the hearing to public comment. Mr. Benson seconded. All in favor.

Next, the Board deliberated amongst itself. Mr. Benson said, that if the Arbor Vitae won't grow but just leave stumps, there needs to be something to shield the cemetery and abutters. This appears to be grounds for legal exception. Mr. Meindersma agreed. Manmade features are affected by the current screening. There is possible liability there, including storm damage to the trees, need for control of growth and root damage. This could encroach on both properties. If the Cemetery Board can deal with this situation and someone is willing to pay for a quality product, it seems that the applicants have found a suitable solution to the problem. Mr. Femia agreed that it would be an improvement over the present situation. Ms. Pedone added that the trees are not privacy trees, and will continue to grow out of control, with the roots doing damage to the graves, opening the applicants to litigation. The fence will be aesthetically pleasing and beneficial. Mr. Benson asked if the Board needed to set any

conditions such as of the vinyl fence being of a like style and quality to what is presently there, and Mr. Goodale guaranteed that this would be done.

Mr. Meindersma then moved to grant the variance. Mr. Benson seconded. All in favor. Mr. Benson added that the written decision will follow. The Board members signed the vote sheet. Mr. Benson moved to close the public hearing. Mr. Meindersma seconded. All in favor.

Minutes of 2/25/13 Meeting:

After review of the draft minutes by the Board, with some changes noted that the Secretary needed to make, Mr. Benson moved to accept the minutes with changes. Mr. Meindersma seconded. All in favor.

Comprehensive Permit Renewal, 94 North Main Street:

This discussion was regarding an e-mail sent to the ZBA, where the Barre Savings Bank is seeking an extension of the Comprehensive Permit on the above property, which is in foreclosure, and was asking the Board if they needed to file with us for that purpose. Mr. Femia discussed the history of the property, that this was regarding a 40B project in Oakdale, and the letter from the bank said that there appears to be a right to extend the permit for 5 years. Mr. Meindersma discussed the question that, without foreclosure, would there be a right to extend the permit, and if so, can the lender exercise that right. Mr. Femia suggested that Mr. Benson speak with Leon Gaumond about this, and perhaps he could speak with Town Counsel if necessary. After the Board read the correspondence from Patricia Gates of Barre Savings Bank, Mr. Benson decided that the Board would take no action at that time, but would need to investigate this further.

Televising of ZBA Meetings:

No further information was received from the Town Administrator's office regarding questions that the Board had regarding the above matter.

Citizen Planning Training Collaborative:

Mr. Femia attended this seminar. A few items that he discussed included the Rules and Responsibilities sessions that he attended, and the fact that, upon attending certain classes, the Town may be eligible for insurance credits. There was better than expected attendance, and the sessions were worthwhile but could have been more informative.

With nothing further to discuss at the public meeting, Mr. Benson moved to adjourn at 8:26 p.m. Mr. Meindersma seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____