



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

May 28, 2013

Chairman: John Benson

Members Present: Jon Meindersma (Vice-Chair), Francis Cahill (Clerk) and Charles Witkus.

Others Present: David Femia (Associate Member) and Secretary Toby Goldstein.

Members Absent: Kristina Pedone, Aaron Goodale, III (Associate Member) and Paul Hennessy (Associate Member)

The meeting was called to order at 7:05 p.m. by Mr. Benson. He read the names of members present and absent. Mr. Benson designated Mr. Femia to take the place of Ms. Pedone, according to Section 6.2A of the Town Bylaws.

Request for Extension of Comprehensive Permit, 94 North Main Street:

(Patricia Gates and Sarah Galvin represented, for Barre Savings Bank). (Ms. Gates objected to being sworn in). Mr. Meindersma moved to open the hearing to public comment. Mr. Femia seconded. All in favor. Ms. Gates discussed the background of this request. She submitted a request for a 3-year extension to the permit. Barre Savings Bank foreclosed on the property on 12/20/2012. Brian Lever obtained the Comprehensive Permit originally. According to Paragraph 25 of the Comprehensive Permit, the applicant is entitled to one 3-year extension. In Paragraph 24, the Comprehensive Permit will continue with the property, and the applicants feel that Barre Savings Bank has stepped in for Mr. Lever. In March of 2013, Ms. Gates sent a letter to the Town requesting the extension (this is on file). She also drafted a vote model, based upon a vote by the ZBA on 4/9/2009 (also on file).

Mr. Benson then opened the hearing to questions from the board members. First, Mr. Witkus questioned, if the first extension is automatic, why the board needs to issue it again. Ms. Gates replied that no extension was ever signed. The Comprehensive Permit was originally issued on 10/3/2008, to run for 5 years (until 10/3/2013). Mr. Lever approached the ZBA twice for project changes, but an extension was never made.

Mr. Benson then stated that this extension rule is limited to the 40B, not building permits that may be requested in the future. Ms. Gates replied that the building permits have expired, only the Comprehensive Permit is to be extended.

Mr. Meindersma then asked if the bank intends to sell the property or make improvements to it, to which Ms. Gates replied that they must have the Comprehensive Permit in place to sell the property or else it has no value. They are hoping to sell it to a third party to develop it.

Mr. Femia then added that, if the bank sells it, the Comprehensive Permit is in place but the buyer must go to the Town to obtain other permits. Ms. Gates acknowledged that they would have to obtain foundation and building permits from the Town. Mr. Femia asked if it is public knowledge that the property is for sale, and Ms. Gates replied yes and that, at the foreclosure, there were no viable bidders. But, in response to a question from Mr. Benson, she does not know if the property is currently listed.

Mr. Witkus asked Ms. Gates about the worth of the property, to which she replied that the bank does not know. Mr. Witkus then discussed the original public hearing for the Comprehensive Permit, at which he was a zoning board member, and that the applicants were allowed more units for the project than what the Town approved, due to an appeal before the State Housing Authority in Boston. Ms. Gates acknowledged this.

Mr. Femia then asked Ms. Gates if she has seen the property, and she replied that she has seen the front of it and the layout. Mr. Femia added that most of the land is behind houses.

After asking the board if there were any more questions, of which there were none, and Ms. Gates if she had any more information to present, Mr. Benson then asked for comment from the public.

First spoke John Owanisian, 8 Stillwater Heights, a resident of Oakdale. He discussed moving there in 2005, unaware of the pending development (40B). He feels that the project is inconsistent with the area's character, and views it as an unfriendly development and that it overrides local control due to the State's appeal decision. He asked, if the board does not grant the extension, what would be the downside? In response, Mr. Meindersma read from the Comprehensive Permit the statement that the applicant shall be entitled to request one 3-year extension. If the board does not make a reasonable denial of this, they are in violation of that statement and open to litigation. He asked Mr. Owanisian if he had another reason for denial other than the character of the project; Mr. Owanisian then asked if the public has any input into the scope of the project. Mr. Benson replied that, at the time the Comprehensive Permit request was filed, the project was approved by the ZBA. If a new developer wanted to make a substantial change to the project, he/she would have to come before the board again. Mr. Owanisian opined that the project, with 96 units in a rural, historic area, would be out of

proportion. Mr. Femia explained that, if the board approves the extension, it is mainly for purposes of the bank being able to sell the property, but permits to do work there would still have to be obtained.

Mr. Benson then discussed that the matter before the board at that time is the clause stating that the applicant is entitled to one 3-year extension, not to be unreasonably denied; how the property is going to be used was not the issue before the board at that time. The decision on the extension is not based upon liking of the project, and the board members changing their minds on previous approval of the project is not reasonable.

Mr. Benson then asked for any further public comment, and there was none, so Mr. Meindersma moved to close the hearing to public comment. Mr. Femia seconded, all were in favor, and Mr. Benson then asked the board to deliberate.

Mr. Benson discussed again the issue of Paragraph 25 of the Permit, of the extension not being “unreasonably denied.” Mr. Meindersma discussed Paragraph 24, finding that the bank is the successor, entitled to step into the shoes of previous owner Mr. Lever. Mr. Benson opined that no one has presented a reasonable denial of the extension. Mr. Witkus mentioned the original ZBA approval of 56 units for the project, with the State appeal ruling for 96 units, and he asked if it could be mentioned in the minutes that one members would want 56 units, even though he voted to approve the extension. Mr. Benson replied that, since the original permit was already recorded, a member can’t express dissent. Mr. Femia expressed the hope that the bank would keep the ZBA informed of any progress of the project, and Ms. Gates replied that they would do so.

Mr. Benson then asked, if there were no other comments by the board, for a motion; Mr. Meindersma then moved to extend the Comprehensive Permit in question for a period of 3 years, to 10/3/2016, according to Paragraph 25 thereof. Mr. Cahill seconded. All in favor. There was a unanimous “yes” vote. All members then signed the vote sheet.

Public Hearing, Sunshine Sign Company, Petition for Variance, 306 West Boylston Street:

This petition is for the applicants to erect a sign on the now Clinton Savings Bank at the above address. (Representatives are Ellen McGovern of Clinton Savings Bank and Kieran Stone of Sunshine Sign Company).

Mr. Benson swore in both representatives. Mr. Benson stated that the sign proposed by the applicants is a 36” x 160” (40 sq. ft.) illuminated roof sign. (According to town bylaw, the size restrictions for signs are 30 sq. ft. for a wall sign, and 24 for a projecting sign). The applicants provided the board with schematics (on file). He asked the applicants, with the sign proposed facing south on Route 12, going from West Boylston towards Worcester, why should the board

approve it? Mr. Stone replied, first of all, the previous Friendly's sign was in the same location, and with heavy traffic on Route 12, they want to minimize short stops to access the bank.

Mr. Benson then asked why the sign in front of the bank is not sufficient. Ms. McGovern replied that the sign in front of the building is closer to the entrance rather than to the street. Also, the night depository would need more lighting if the roof sign were not in that location. Mr. Benson then referred to the former Clinton Savings Bank on Route 12, replaced by this building; he mentioned that the former bank did not have such a sign. Ms. McGovern replied that that building was a taller structure, and had more sets of lights than the new building. Mr. Benson then mentioned that there are several more banks on Route 12, none of which have a similar-sized sign, and Ms. McGovern mentioned the Sovereign Bank, which is closer to the road than the building in question. Mr. Stone added that Commerce Bank also has an illuminated sign.

Mr. Benson then discussed Form A of the Petition packet, which lays out reasons to grant the Variance, and mentions the finding of substantial hardship, financial or otherwise. Therefore, he stated, if the ZBA grants the Variance, there must be substantial hardship on the part of the applicant.

Ms. McGovern opined that the size of the sign would create more of an identity for the bank to add to its existing customer base. Mr. Witkus asked if it was not possible for the applicants to reduce the sign by the 40" over the bylaw size limit. Mr. Benson added that 10 square feet would reduce the sign well below the bylaw limit. He then said that the goal of the board is not to curtail advertising of a business, but they have Zoning Bylaws which limit their capability to grant variances. He questioned if the sign could be constructed within the confines of the bylaws; the size, and not the sign itself, is the problem.

Mr. Stone replied that the reason for the proposed size of the sign is that the applicants are trying to work within the existing cabinet of the previous sign on the building. The question is if it is physically possible to construct a smaller one.

Mr. Meindersma asked if the applicants needed to use all 160" of sign in order to use the pre-existing brackets, to which Mr. Stone and Ms. McGovern replied that they did not.

Mr. Benson then asked why there would not be a sign on the other side of the bank as well. Ms. McGovern replied that they have a limited area of space to use their logo, and thought, at the time, that this was the best positioning for the sign. Mr. Stone added that the side on the ground is facing the 290 exit, also, which increases its exposure.

Mr. Benson then referred to a letter from Marc Frieden of the Town's Planning Board (on file), finding that the proposed sign is larger than the maximum allowed for a wall sign or projecting

sign. Mr. Witkus then suggested that the applicants could withdraw the petition, with the stipulation that, if they could not manage without the size planned of the sign, they could return before the ZBA without re-filing. Mr. Benson said that they should not withdraw, but they should put into writing at this hearing that they give an extension to the board, and that the board will not act at this time; the applicants will not have to re-file, as the petition is still pending with the board. The applicants should see what they are able to do regarding changing their planned size of the sign, and they are allowed to come back with no prejudice by the town if they cannot make the situation work, which may show substantial hardship for them.

Mr. Meindersma and Mr. Femia suggested that the applicants also discuss with the Planning Board what the new sign bylaw states, to see how they can work to obtain approval for the variance from the ZBA.

Mr. Benson added that if the sign is within the zoning bylaw, it does not have to come back before the ZBA; the Building Inspector can decide. However, there is still the 40-ft. issue remaining.

As the applicants decided to go along with continuance, Mr. Benson asked them to give them a written document tonight, requesting the continuance (90 days, at Mr. Meindersma's suggestion), addressed to the ZBA, or else the board would have to act on the Request for the Variance that night. Mr. Stone wrote out a letter stating the above (on file). Mr. Meindersma moved to grant the request for a continuance, dated 5/28/13. Mr. Femia seconded. All in favor. Continuance was granted by unanimous consent.

Discussion of ZBA Adoption of Comprehensive Permit Rules and Regulations at 5/23 Meeting:

(Dick Heaton, Town consultant for 40B matters was present for the discussion). Mr. Heaton discussed his background. He developed the Rules and Regulations document (on file) 10 years ago. He is a professional consultant. Each community modifies the Rules and Regulations to suit their own needs. The document embodies rules by the DHCD. The Rules and Regulations adopts a fee schedule for the town. He discussed the two major fees, administrative and peer review, and the processes by which they work. A 53G account pays people to provide technical information. When the balance falls below 50% for the account that is set aside, from invoices that are approved, the developer is asked to deposit more money. By the Rules and Regulations, the developer is told that he must do this. There is no limit to the amount asked for. The town zoning board can modify this to fit their needs.

Mr. Heaton discussed with the board the differences between dismissing, rejecting, and denying requests from applicants. He said that there is no difference between those terms, and if the board does not receive the necessary fees, they can deny the request. The board can accept, deny, or accept with conditions. If they deny, the burden of proof is on the Town, and

they must present a valid reason. But, if they accept with conditions, the burden of proof is on the developer.

Mr. Heaton then discussed with the board criteria that the town has to meet, such as percent land area, for 40B building. He said that the Town has not taken an official position yet as to whether or not West Boylston is at the required 1.5 percent, but they will have a televised meeting next week explaining why the Town is at that percentage. This would be a tool for the ZBA when faced with Comprehensive Permits to decide upon. He agreed with Mr. Femia's suggestion from the Affordable Housing Forum that it is helpful to work with other town boards when a potential 40B project surfaces. He then summarized the process whereupon the project proceeds. First, the developer must lay out the project proposed for Mass. Housing, who must produce a Project Eligibility Letter to go to the Town Selectmen. This informs the Selectmen that they must send comments within 30 days. It is suggested that the Selectmen get comments from all town boards (except ZBA), and put them together in a letter to Mass. Housing, and this would be included in a ticket to the developer. The ZBA should then ask representatives from the other town boards to help them review this.

Next, the board members asked Mr. Heaton several questions pertaining to specific parts of the Rules and Regulations. Mr. Meindersma asked about escrow fees mentioned in section 1.1.2.1, which are dependent upon number of units, and Mr. Heaton explained the calculations listed. Mr. Benson then asked about fees for consultants, and Mr. Heaton referred to section 1.9.3 to explain this. Mr. Femia asked about Appendix A, which is a form for listing construction and development costs, and Mr. Heaton explained that this information helps determine the developer's profit. He continued with section 1.4, description of the proposed project, the points of which should be checked off prior to the hearing. Mr. Femia then asked about section 1.1.3, which stated that 20 copies of the application for the Comprehensive Permit are required by the board, but the Town's website states 24 are required. Mr. Heaton explained that these are needed to provide copies to the other town boards. Mr. Femia also asked about section 1.2.3, and Mr. Heaton explained that this refers to the fact that Mass. Housing must issue certain paperwork before issuing a ticket to the applicant for the 40B for them to proceed. This means that the applicant has fulfilled the requirements of 760 CMR 56.04(1).

Mr. Witkus then asked about amount of profit that the developer is allowed to make. Mr. Heaton replied that they are allowed 15%. After the project is built, auditing is done to be sure of this. The town can recover excess profits that the developer might make. Mr. Femia asked if the developer is required to provide the information to the town, and Mr. Heaton replied yes, when the last unit is sold. Mr. Benson asked if there is any penalty if the developer earns excess profits, and Mr. Heaton replied that, when confronted, the developer usually tries to settle, offering the town some of the money at that time in order to avoid legal action. The

DHCD has amended rules for the town to obtain the extra money. Mr. Witkus then asked about waivers that the applicant might ask for, and Mr. Heaton replied that the board must make the applicant specify specifically the waivers and why they want them, and the board must determine their validity. Mr. Femia then asked, with regards to an extension on a Comprehensive Permit, for example the one granted to 94 North Main Street tonight, what if the bank cannot sell the property within the 3 years of extension, and Mr. Heaton replied that the applicant probably will ask for another extension. Mr. Benson added that, this time, the applicants had a contractual right to the extension, but the next one would be discretionary. Mr. Femia then asked Mr. Benson, if it is proven that West Boylston has met the required 1.5% land area, could the board be more selective as to how they vote, and Mr. Benson replied that, in this situation, the board already granted the permit and extension and cannot act retroactively. Mr. Heaton then added that applicants usually ask for 50 units over what they really want initially. Mr. Heaton also advised the board to be aware of any possible 40B projects, and if they hear of one, to obtain as much information about it as possible even before any filing takes place.

Mr. Meindersma then asked Mr. Heaton about utilities being detailed on the plan for the project, and Mr. Heaton replied that they would be on the plan, but the board can add to the utilities specified if they want, such as gas, electric, telephone and cable. Then, referring to section 1.4.6, if the developer is planning to subdivide the property, must he show the board what he plans to do, and Mr. Heaton replied that he must indicate the boundaries of the subdivisions. Mr. Meindersma then asked about section 1.5.7 regarding parcels of open space or conservation land, and Mr. Heaton explained that any conservation land must be taken into consideration in so far as other entities that might have jurisdiction over it. Mr. Benson asked about DCR's involvement, and Mr. Heaton replied that they have no special status as a state agency, but if they have abutting property to the proposed project, they have certain rights. Mr. Meindersma then referred to Section 4, regarding changes after issuing of the permit, clarifying that the board has a 30 day deadline by law to decide as to whether or not the change is substantial, and if so, the applicant must be notified within 20 days, and Mr. Heaton verified this.

With no more questions or comments from the board, Mr. Benson proposed that the board continue this discussion to the June 17 meeting, to give time to reflect on any proposed amendments to the Rules and Regulations. Meanwhile, the Rules and Regulations adopted at the May 23 meeting are still in effect. Mr. Meindersma moved to continue the discussion of the rules governing Comprehensive Permits to the next meeting. Mr. Femia seconded. All in favor.

Minutes of April 22 Meeting:

After review of the draft minutes by the board, Mr. Meindersma moved to accept the minutes as distributed with several amendments (which he listed to the board). Mr. Femia seconded. All in favor.

At 10:00 pm, Mr. Femia moved to adjourn the meeting. Mr. Meindersma seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____