



# TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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## MEETING MINUTES

**October 8, 2013**

Chairman: John Benson

Members Present: Jon Meindersma (Vic-Chair), Francis Cahill (Clerk) and Kristina Pedone

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

Members Absent: Charles Witkus, Aaron Goodale, III (Associate Member) and Paul Hennessey (Associate Member).

The meeting was called to order at 7:33 p.m. by Mr. Benson.

Mr. Benson proceeded to read to the Board members names of those members present and those absent. Referring to Section 6.2A of the Town's Zoning Bylaws, Mr. Benson designated Mr. Femia to replace Mr. Witkus on the board. Therefore, there was a quorum present to conduct a meeting.

Mr. Benson stated to those present that the purpose of this interim meeting was to address a letter (on file) submitted by the Manager of Afra Terrace, LLC, Iqbal Ali, regarding a change to the Comprehensive Permit issued under Chapter 40B. In this letter was a request to change (3) affordable units into regular market rate units, offering \$10,000/unit to the Town. There is no evidence that Mr. Ali filed this letter with the Town Clerk. Mr. Femia found the letter in the ZBA mailbox on 9/25/13; the letter was dated 9/22/13. Mr. Femia immediately gave the letter to the Town Clerk.

Mr. Benson then asked if any board members had issues to discuss. Mr. Meindersma clarified, that there are currently 39 market-rate units and 13 affordable units at Afra Terrace. Mr. Benson repeated that Mr. Ali seeks to change 3. Mr. Femia stated that, on 9/15/2005, the project was granted the permit for 52 total units, with 13 which were to be affordable; in other words, 25% or 1 in 4 were to be affordable.

Richard Heaton, Community Housing Specialist, spoke next. He said that he reviewed the request, which he opined to be unusual. There is a question as to whether the ZBA has the

authority to deny a request of this nature if the Town would not be receiving the 25% affordable housing stipulated in the permit, and whether this would be a substantial or insubstantial change. If the change is not decided to be substantial, the applicant can implement the change. If it is deemed substantial, the board must notify the applicant, and they must hold a public hearing within 30 days. They will review the materials from the applicants and they have 180 days to render a decision, 40 days to write the decision. One other option is for the applicant to withdraw his request, with no prejudice from the ZBA, if the applicant decides it is not worth the work required. The state has rules and regulations for the procedures the applicant must follow if his request is allowed, the materials he must provide to the board, and information outlining such things as financial implications of the changes and any fees required, such as to process the application and peer review fees. Mr. Heaton pointed out that, at this meeting, the ZBA must decide if they consider the change requested to be substantial.

Mr. Benson discussed the question of whether or not the applicant made a legal request. He mentioned that, according to regulations, Mr. Ali must market this in a certain manner, and all profit from units must go to the Town. He also opined that any decision made tonight is not binding, and Mr. Heaton agreed. Mr. Benson also opined that, if they allow the change, this would change the 40B agreement originally signed. Mr. Heaton added that it would also violate the Comprehensive Permit Rules and Regulations and the 40B law. Mr. Benson then opined that all zoning bylaws waived would be potentially violated by this.

Mr. Heaton then discussed the fact that the affordable units are set at a certain price, and 40B establishes a maximum income for potential tenants but they must qualify for a bank mortgage. There is an option to reduce the price of the units, thus allowing more buyers.

Mr. Benson responded, asking if it is possible for a buyer to ask to reduce the asking price, and does the applicant have specialists for marketing? Mr. Heaton replied that Delphi Associates is the marketing firm used presently, but the applicant may want to retain others for this purpose. He has used Delphi as of 9/2012.

Mr. Benson then asked if there were any other questions from the board. Mr. Meindersma mentioned the issues of insufficient notice and lack of certain procedural requirements by the applicant, such as the lack of certified mail or currier delivery of the request letter, and failure to supply any supporting documents with the request, in addition to the fact of the applicant wanting to decrease the amount of affordable units from the 25% already present; he opined that he did not see how the request is not substantial.

Mr. Benson, referring to the request letter from Mr. Ali, stated that the only rationale for making this change was that it is difficult for Mr. Ali to find qualified buyers for the affordable housing units.

Mr. Cahill asked Mr. Heaton if he knew the selling price of the non-affordable units, and could it be in excess of \$250,000; Mr. Heaton did not know exactly, but thought that the amount was probably over \$250,000. Mr. Benson opined that the proposed compensation by Mr. Ali to the Town for each unit changed would be out of scope compared to how the change would impact the original Comprehensive Permit.

Mr. Femia asked Mr. Heaton if he had ever dealt with a situation such as this, and he replied that he did not. Mr. Benson opined that whatever decision the board makes should not be based on decisions of any other towns, nor on whether or not the proposed \$10,000 compensation is appropriate. Mr. Femia opined that the change should be considered substantial, due to the fact that the Town's percentage of affordable housing, which has met the 1.5% total requirement, will drop below the 1.5% if the change is made. Mr. Meindersma agreed that it would be substantial in relation to other changes that the Town might make, but the issue at hand is this particular project. Mr. Benson agreed, especially with the 25% permitted amount of affordable housing being decreased. Mr. Meindersma opined that the change is not insubstantial. Mr. Benson said that a substantial change would require that the board reject the proposal and hold a public hearing. Mr. Heaton added that, if they determine the change to be substantial, there needs to be a formal hearing process. The applicant must submit all materials, which the zoning board will review.

Mr. Benson next polled the board, on the question of whether the proposed change is substantial or insubstantial. (Ms. Pedone asked Mr. Heaton if this process is in accordance with our regulations, and he replied that it was).

Ms. Pedone: Substantial (Yes vote)

Mr. Cahill: Substantial (Yes vote)

Mr. Benson: Substantial (Yes vote)

Mr. Meindersma: Substantial (Yes vote)

Mr. Femia: Substantial (Yes vote)

Mr. Benson stated that the board is in agreement. Any legal right that the Town has, the board is not acting upon. The board is in agreement that the proposed change is a substantial change. Mr. Benson will prepare a letter to go to the applicant, notifying of what has taken place. (Mr. Heaton prepared a proposed draft, which is on file).

Mr. Benson will forward a suggestion to the Town Administrator for Town Counsel to determine if the Town has other legal rights impacted by this proposal; the issue before the ZBA at this time is the question of substantial or insubstantial change.

Mr. Benson stated that the hearing will take place on October 28, at the next scheduled ZBA meeting. The board asked Mr. Heaton to attend. The Secretary will determine if she will be able to place the legal advertisement in the Telegram and Gazette in time for the meeting to be held on the 28<sup>th</sup>.

Mr. Meindersma moved to adjourn the meeting at 8:22 pm. Mr. Femia seconded. All in favor.

Respectfully submitted,

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Toby S. Goldstein, Secretary

Date Accepted: \_\_\_\_\_ By: \_\_\_\_\_