



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

October 28, 2013

Chairman: John Benson

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

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

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

The meeting was called to order at 7:06 p.m. by Mr. Benson.

Mr. Benson proceeded to read to the Board members names of those members present and those absent.

Mr. Benson then read a letter from John Smolak, representing Cumberland Farms, dated October 22, 2013, requesting that their continued public hearing be continued until November. Mr. Benson continued, that this continuance was posted on the Town website and removed from the agenda for this evening. (Any people attending the meeting for the purpose of participating in this hearing left if they chose to do so).

Mr. Benson then mentioned the first matter of business on the agenda, of the public hearing for Viewpoint Sign, Petition for Variance, 184 West Boylston Street (Planet Fitness). He informed those present that, due to a medical emergency, the representative for the petitioner cannot attend the meeting tonight and the petitioner is requesting continuance until November (e-mail on file). The board voted to open the public hearing. Mr. Meindersma notified Mr. Benson that he was recusing himself. Mr. Benson appointed Mr. Femia to replace Mr. Meindersma, according to bylaw Section 6.2A. Mr. Benson asked for a motion to continue the public hearing to the November meeting, pursuant to the petitioner's request. Mr. Femia opined that there were discrepancies on the abutters' list with the omission of some abutters. Mr. Benson replied that the board would look into the matter, but that they cannot hold the hearing without a representative being present. Ms. Pedone moved that the hearing be continued until the November 18 (next scheduled) meeting. Mr. Femia seconded. All in favor.

(Mr. Benson then called a recess before opening the next public hearing for Afra Terrace, not scheduled until 7:30; therefore, the meeting was off-record until 7:30).

Public Hearing, Iqbal Ali, Afra Terrace LLC, Regarding Request Dated 9/22/13 to Change (3) Affordable Units to Market Rate Units at Afra Terrace:

At 7:31 pm, Mr. Benson called the meeting back to order. He informed those present that the next order of business was a public hearing held to decide upon the request by Iqbal Ali, Afra Terrace LLC, to modify the Comprehensive Permit dated 9/15/2005. This matter was discussed at the 10/8/13 ZBA meeting; Mr. Ali had submitted a letter (dated 9/22/13-on file), proposing to change (3) affordable units to regular market rate units, offering \$10,000/unit to the Town in exchange for the change. At the 10/8 meeting, the board voted that this would be a substantial change (vote sheet on file), and a letter was mailed to Mr. Ali, dated 10/9/13 (on file), notifying him that the board found substantial change; Mr. Benson stated that he also e-mailed Mr. Ali of this finding.

Mr. Benson then asked if there was any representative for Afra Terrace present; no one replied. Mr. Benson notified those present that Town Counsel presented some written advice to the board. He emphasized that the matter tonight was to act upon Mr. Ali's request. He continued that there is no evidence that Mr. Ali filed his request letter properly. Mr. Benson explained that, if the change is accepted, it will change the Comprehensive Permit requirement that 25% of the total units be affordable (in this case, the total is 52; 25% would be 13 affordable). There is a regulatory agreement involved, under which the project is subsidized. The matters before the board are, does the modification alter this agreement, and is it in the best interest of the Town? Also, the question of whether or not the difference for the Town is greater than the \$10,000 per unit offered by Mr. Ali.

Mr. Benson then asked for any comments from board members. Mr. Meindersma opined that Afra Terrace needs to keep their agreement, due to the regulatory agreement. Mr. Benson said that the only communication received from Afra Terrace to date was the aforementioned letter of 9/22. Paul Hennessey, Associate Member who attended tonight's meeting, replied that Mr. Ali did, at one point, attend a ZBA meeting (Mr. Hennessey was a board member at that time, date unknown), and asked how the board would feel about his making changes from affordable to regular sale units; Mr. Hennessey recalled that this was not discussed at an open meeting, but after the meeting was adjourned. The board replied to Mr. Ali that he can apply for that change if he wants to do so. Mr. Benson replied that what the board is acting upon tonight is the 9/22 request letter, which is all the information that they have, and there is no evidence that the letter was filed with the Town Clerk.

Linda Isgro, also a former ZBA board member and chair-person, then addressed the board. She wished to define the scenario discussed by Mr. Hennessey. She related that, at that meeting mentioned by Mr. Hennessey (no date was recalled), she was the chair of the ZBA, and recalled that Mr. Ali attended an open meeting with a realtor; she stated that this is documented in meeting minutes which are on file. Mr. Ali wanted to convert some remaining units into rental units. Ms. Isgro said that she opined that this would be against policy, and called Mass Housing also to obtain their opinion on the matter. She said that Mass Housing replied that this is not done. She recalled that Mr. Ali presented information about a project in another town, but it might not have been the same situation. Ms. Isgro continued that she would be opposed to the present board approving the changes, which would remove the Town from “safe harbor” status regarding number of affordable units and therefore would be a very important decision. She opined that, regarding the question of whether or not the change would benefit the Town, the proposed compensation to the Town for each unit changed would not help unless the Town has the number of affordable units that it needs. If the change is allowed, the lost affordable units cannot be replaced. Ms. Isgro then also corrected Mr. Hennessey’s statements, saying that the previous meeting with Mr. Ali regarding change of units is recorded in minutes and was present on the agenda for that same meeting. Mr. Meindersma then asked Ms. Isgro, if she does not think that the change would be in the Town’s best interest, and she replied “no.”

Next to speak was Pat Halpin of the Affordable Housing Trust. She also opined that the proposed change would not be in the Town’s best interest, due to the difficulty involved in the Town’s reaching the 10% affordable housing requirement.

With no further comment from the audience, Mr. Benson asked for a motion to close public comment. Ms. Pedone moved to do so, and Mr. Meindersma seconded. All were in favor. Mr. Benson stated that, with Mr. Witkus absent, there were (4) board members voting on the matter. Mr. Benson opined that the decision was straightforward regarding accepting the modifications proposed by Mr. Ali, and that the questions involved were, first of all, to accept Mr. Ali’s request appears to affect the regulatory agreement, and it will allow the developer to benefit from the waiving of bylaws. He opined that Mr. Ali will be able to gain the benefits of the 40B but not follow the regulatory agreement. Mr. Femia agreed with these statements. Mr. Hennessey added that he appended the meeting tonight because the former zoning board had put much time and effort into the original Comprehensive Permit process for Afra Terrace; Mr. Ali had expanded the project greatly over his original plans, and he opined that now the Town needs to maintain its affordable housing.

Mr. Benson explained that a “yea” vote would approve the requested modification (grant Mr. Ali’s request), and a “nay” vote would deny the modification and deny his request. He continued that the issues for the board were whether or not the modification violates the

regulatory agreement, and will it not be in the best interest of the Town. He noted that Mr. Femia cannot vote on this matter, and asked for any further comments. With no further comments or questions, Ms. Pedone moved for the board to vote; Mr. Cahill seconded. All were in favor. The vote was as follows:

Ms. Pedone-“nay”
Mr. Meindersma-“nay”
Mr. Benson-“nay”
Mr. Cahill-“nay”

All members voting voted “nay”; there were no “yea” votes. Therefore, the request was denied. The board opined that the request would violate the regulatory agreement and not be in the best interest to the Town. Ms. Isgro asked Mr. Benson if the Comprehensive Permit is the regulatory agreement, and he replied that they are separate; she opined that the request would violate the Comprehensive Permit also, and Mr. Benson agreed.

Mr. Meindersma moved to close the public hearing. Ms. Pedone seconded. All in favor. (Mr. Benson will issue a decision, to be filed with the Town Clerk and sent to Mr. Ali).

Minutes of 9/16 and 10/8/13 Meetings:

The board decided to continue the minutes of 9/16 to the next meeting for clarification purposes.

Next, after review of the 10/8 minutes by the board, Ms. Pedone moved to accept the minutes as submitted. Mr. Cahill seconded. All in favor.

At 8:36 p.m., Mr. Meindersma moved to adjourn the meeting. Ms. Pedone seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____

By: _____

