



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

March 17, 2014

Chairman: John Benson

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

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

Members Absent: Aaron Goodale, III (Associated Member)

Prior to the commencement of the meeting, Mr. Benson made an announcement to those present regarding an item on the agenda, that of update of Oakdale 40B project (this took place in Conference Room 2/Senior Center Room, due to the amount of people attending). He announced that there would be no discussion of the 40B project at this meeting. Mr. Benson read to those present the history of the project; on May 12, 2013, a 3-year extension to the permit was granted to Barre Savings Bank, as the property underwent foreclosure at some point. At that time, public comment was received, and the extension was granted. He added that, in Town Counsel's opinion, the board did not have reasonable grounds to deny the extension, and if they did deny it, the Housing Appeals Court would be likely to overturn the denial, and a waste of Town funds would take place to defend an undefensible decision. Even if ZBA did not act at that time, most likely the permit would have been extended under the State's Permit Extension Act. Since then, no petitions have been filed with the ZBA relative to that project; the board has not acted upon anything. According to Town Counsel, the board has no authority to conduct a public hearing, as no petitions have been filed. Mr. Benson continued that, with regard to monitoring the permit, the ZBA is not an enforcement agency, and not responsible to enforce; the Building Inspector issues building permits and is responsible to review plans for work and insure compliance with zoning bylaws. Regarding the Oakdale 40B property, ownership has changed at least twice, and the ZBA has no authority to prevent those transfers. The Comprehensive Permit goes along with ownership of the land. If a petition for ZBA action is submitted, action will take place, but at this time, ZBA has no authority to conduct a public hearing. Mr. Benson reiterated that the board is not conducting a meeting or public

hearing tonight relative to the 40B project and wanted to make clear the authority of ZBA. He mentioned that the owner of the property expressed a desire to meet with the ZBA regarding use of solar power and a fire lane, and he was re-directed to the Light Department and Fire Department. Mr. Benson added that this item was mistakenly on the agenda and should have been removed. (At that time, whoever wished to remain for the remainder of the evening's discussions listed on the agenda moved to Conference Room 1).

Mr. Benson called the meeting to order at 7:27 p.m. He read the names of full and associate members that were present. Next he read from the agenda the first item listed, that of the request of GC CF New England, LLC, to withdraw the petitions for Special Permit and Variance for 114 Worcester Street (Cumberland Farms), which was continued from the February 24 meeting, without prejudice. After Mr. Benson asked the board if all members had read materials submitted by the petitioners and others regarding the withdrawal, Mr. Cahill moved to accept the request for withdrawal without prejudice. Ms. Pedone seconded. All in favor.

Mr. Benson stated that Town Counsel informed him that a simple majority vote was required. If the withdrawal is not accepted, the board would have to proceed with the petitions as submitted. Mr. Benson continued, that the applicants were in the process of amending their plans prior to submitting the request to withdraw. If the board rejects the request, the applicants can re-file with different plans. He added that the attorney of one of the abutters suggested that it would be best to have the applicants withdraw without prejudice (letter on file) and re-submit at a later time so that the abutters would have time to review the information; Mr. Benson added that there would be no time limit on re-filing.

Mr. Benson informed the board that a "yea" vote accepts the withdrawal without prejudice; a "nay" rejects that. The vote was as follows:

Ms. Pedone: Yea
Mr. Cahill: Yea
Mr. Benson: Yea
Mr. Meindersma: Yea
Mr. Witkus: Yea

Mr. Benson announced that the board voted unanimously, 5 "yea", 0 "nay"; therefore, with a 4-yea vote needed to accept, they voted to accept the request for withdrawal without prejudice, and the Cumberland Farms matter is now closed.

Minutes of 2/24/14 Meeting:

After review of the minutes by the board, Mr. Meindersma moved to accept the minutes as submitted. Ms. Pedone seconded. All in favor.

After the board agreed that there were no further matters to discuss, Ms. Pedone moved to adjourn the meeting at 7:38 p.m. Mr. Cahill seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____