



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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

MEETING MINUTES

April 28, 2014

Chairman: John Benson

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

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

Members Absent: Paul Hennessey (Associate Member)

Mr. Benson called the meeting to order at 7:19 p.m. He read the names of the members and associate members present and absent. Next he read the items on the agenda; there were listed (2) public hearings, the first for Borrego Solar Systems, Inc. and the second for Dollar Tree. Borrego Solar Systems, Inc. requested a continuance and will be on the agenda for the next ZBA meeting. Also listed on the agenda under "Other Business" were an Open Meeting Law Complaint, filed on 3/26/14, and the minutes of the March 17 meeting.

Open Meeting Law Complaint:

(Mr. Benson addressed this topic first, due to the continuation of the first public hearing, and it was too early to begin the second public hearing). Mr. Benson stated that complaints from six residents were filed together, on 3/26/14, all with the same allegations, and he proceeded to address each allegation.

First, regarding the allegation that, prior to the 2/24/14 ZBA meeting, the Board's posted agenda failed to include a topic that was allegedly discussed at the meeting; the topic being Mr. Iqbal Ali of Crescent Builders, a property located at 94 North Main Street, and a previously approved comprehensive permit relating to that property. Mr. Benson stated that at the February 24, 2014 meeting, he brought to the Board's attention a letter sent to the Board on February 14, 2014, by Mr. Iqbal Ali. The letter stated that Mr. Ali's company, Crescent Builders, had purchased the property at 94 North Main Street, and that he would like to meet with the ZBA to discuss changes to the previously approved comprehensive permit. Mr. Ali did not describe the changes that he was proposing, and he did not request that the Board take any

action in relation to the permit, or the property. Mr. Benson stated that the Board did not engage in any deliberations relating to that letter, and the Board did not take any action with regard to that letter or express an intent to take any action. He further stated that the Board did not engage in any substantive discussion or debate regarding the letter. Mr. Benson reiterated that there were no pending petitions before the Board, from Mr. Ali.

Mr. Benson also stated that at the February 24, 2014 meeting he referenced an unrelated matter concerning Mr. Ali, which pertained to a development known as Afra Terrace. Mr. Benson stated that the unrelated matter pertaining to Afra Terrace had been addressed by the Board at the October 28, 2013 Board Meeting. Mr. Benson stated that he only mentioned the Afra Terrace matter as a point of reference for the Board.

Mr. Benson stated that in his opinion, posting a matter on the agenda is not required if discussion is only for informational purposes for the Board.

The second issue in the complaint that Mr. Benson addressed was the allegation that the Comprehensive Permit for 94 North Main Street was extended at the Board's May 28, 2013 meeting, without proper notice being given. Mr. Benson responded to this allegation by stating that the Comprehensive Permit renewal was listed on the March 18, 2013 agenda; as was recorded in the minutes of 3/18/13, the board took no action at that time, as it needed more information and would investigate further. He continued that, on the agenda for the 5/28/13 meeting, this item was again posted on the agenda, and after consideration, the Board approved the request. The Board opined that, according to the language in the Comprehensive Permit, the petitioner had the right to an extension. He added that it was the opinion of Town Counsel that there were no reasonable grounds to deny the extension, and that the extension was filed with the Town Clerk and the Registry of Deeds. Mr. Benson summarized that the request for extension was posted on the agenda twice, and discussed twice, and that Town Counsel agreed that there were no reasonable grounds for denial.

The third allegation to be addressed was that the Board allegedly discussed a Comprehensive Permit at the Board's October 28, 2013 meeting without giving proper notice. Mr. Benson stated that on the 10/8/13 agenda, an item was posted as a discussion of a letter from Mr. Ali, requesting a change of affordable units at Afra Terrace. Mr. Benson stated that the matter was posted for the second time, on the 10/28/13 agenda. Mr. Ali's request for a change of terms of the Comprehensive Permit for Afra Terrace was taken up at the October 28, 2013 meeting. Mr. Benson stated that Mr. Ali did not attend that meeting, and did not submit any written statements. The Board rejected his proposals. Mr. Benson emphasized that the October 2013 meetings did not pertain to 94 North Main Street, only to Afra Terrace, this is all on record, and the Board rejected Mr. Ali's requests.

The fourth allegation was that the ZBA discussed and deliberated the transfer of ownership of the 94 North Main Street property. Mr. Benson stated that, in the 2/14/14 letter, Mr. Ali stated that Crescent Builders was the new owner of the property. Mr. Benson stated that, as reflected in the Board's minutes, the Board did not make any comment, deliberation or discussion of any approval of the change of ownership. Mr. Benson stated that the Board's minutes indicate Mr. Femia opined that Mr. Ali would have to obtain DHCD approval, but the Board made no comment on it.

The fifth allegation was that, regarding 10/8 and 10/28/13, no meeting agendas or minutes referenced ZBA deliberation on the extension request. Mr. Benson replied that there were no notices or agendas in October, because the matter was discussed and approved in May, and not in October. Therefore, there was no reason to discuss it in October.

Mr. Benson wrapped up the discussion of allegations, saying that he reviewed the Open Meeting Law Complaint, and looked at the agendas and minutes related to this, and stated that he believes that the ZBA has addressed all issues, and proper notice was given in all instances that were questioned. Mr. Benson said that he would write a response for the Attorney General by the end of the week, consistent with what was just said. He then asked for any comments from the other ZBA members. Mr. Meindersma opined that Mr. Benson's response to the complaint was thorough, and accurately reflects how the subjects in question were handled.

Mr. Benson then added, that he wanted to apologize for any confusion by the public in the past regarding the meaning of "petition." Mr. Benson stated that Mr. Ali had not filed a petition with the Board, so they cannot approve or disapprove anything. Mr. Benson stated that the ZBA previously approved a comprehensive permit relating to the 94 North Main Street property in 2008. Last year, the bank who had foreclosed on the property requested an extension of the permit. According to the terms of the permit, the extension could only be denied for good cause. Mr. Benson stated that Town Counsel agreed that the ZBA did not have reasonable grounds for denial. Also, regarding the request made of the Building Inspector as the zoning enforcement officer of the Town, the ZBA does not supervise the Building Inspector. Mr. Benson noted that the Building Inspector received a request relative to an enforcement matter, dated 4/9/14, and it has been addressed with him. But the ZBA has no authority on its own initiative to reach out and review previously approved permits.

Mr. Benson then said that he would take comments from the public, but that this was not a hearing. The board would be glad to listen, but is limited as to what they can do.

First to speak was Thomas Reilly of 16 High Street. He asked if the abutters were notified of the extension request. Mr. Benson replied that the permit was only extended, and did not require abutter notification. He added that Town Counsel was only involved for opinion.

Next to speak was Linda Isgro of 70 Prospect Street. She referred to allegation #4, where Mr. Ali stated that he was the new owner of the 94 North Main Street property. She said that she had been following the ZBA meeting agendas, and did not see that item on the agenda. She asked how it could happen that the public had no chance to give opinion? She opined that if the public attended the meeting, they could have appealed the decision or had input. She gave an example of Mr. Ali meeting with the Board, at which point Mr. Benson responded that Mr. Ali never met with this Board, only with the previous Board. Only a proposal for Afra Terrace came before this Board, and it was rejected, but Mr. Ali never appeared; and at that time, the Board did not at all refer to 94 North Main Street. Ms. Isgro then mentioned the letter from Mr. Ali dated 2/14/14, and Mrs. Pedone responded that a letter is not something upon which the Board can act. Mr. Benson added that the letter stating that Mr. Ali would like to speak with the Board is not a request for action and there was nothing for the Board to act on.

Ms. Isgro then mentioned that the 2/14 letter stated that Crescent Builders was the new owner of the property; however, the extension given last year was with Barre Savings Bank as the owner. She mentioned Mr. Femia's suggestion in the 2/24 minutes that Mr. Ali might have to consult with DHCD about this. Mrs. Pedone responded that ZBA has no authority over that, and Mr. Benson added that ZBA can approve the extension of the permit. Ms. Isgro opined that the Comprehensive Permit is applicant-specific; the original owner, Mr. Lever, does not own it anymore. Mr. Benson replied that Town Counsel believed that there were not grounds to deny the extension, even though there was originally a different owner. Written in the permit originally was an allowance for extension; in addition, he opined, because of the State's Permit Extension Act, it would probably be allowed anyway.

Ms. Isgro continued, that when the applicant applied for the extension, the three-year period already expired on October 3, 2013. Mr. Benson responded that the Board did receive public comment on May 28, 2013. Ms. Isgro then said that she discussed with the Building Inspector that the permit had elapsed. Mr. Benson replied that this was discussed with Town Counsel. Mr. Meindersma continued that before action was taken, the Board had an opinion in hand. Ms. Isgro continued, opining that the permit is applicant-specific and can only be transferred when the specified work is done. Mr. Meindersma then asked Ms. Isgro what was improper about the notice of the extension, as it was posted on agendas twice? Ms. Isgro asked, when the ZBA acted, didn't notification to abutters and in the newspaper have to be given, and she claimed that the posting was only done about an hour before the meeting. Mr. Benson responded that it was posted on agendas for two separate meetings. Ms. Isgro then referred to

a Certificate of No Appeal, stamped in November 2013. Mr. Benson replied that the public had since May 2013, when the decision was given, up to December 2013, to appeal the decision.

(Ben Hebert of 12 High Street then joined the conversation). Mr. Benson continued that the decision was stamped by the Town Clerk in July, 2013. Ms. Isgro disagreed, and said that there was a decision filed with the Town Clerk in November. Mr. Hebert opined that the minutes and the record differed, and suggested that the minutes might have been altered. Mr. Benson responded that the Board voted on the extension on 5/28/13, and it was effective by law even if no further action was taken.

Ms. Isgro then asked, when the Board acted in May to extend the permit, did they do research on what was previously done regarding this permit? Mr. Benson replied that he, the Board and Town Counsel looked at the permit and agreed that there were no grounds to refuse the extension. He said that the Board respects the right for the public to disagree with the action of the Board, but he feels that they did what they were legally required to do, and Town Counsel agreed. Ms. Isgro still opined that the permit had expired before the Board extended it.

Next to speak was Russell White of 25 Waushacum Street. He asked if the ZBA has any authority over environmental issues and opined that endangered species had been removed by clean cutting that took place on the property. Mr. Benson responded that the permit has not changed while the present Board has been serving. Mr. Reilly then asked if the ZBA realized that they were extending the permit with the understanding of there being a new owner, who had in mind a new scope of work? Mr. Benson replied that the Board did not approve of changes to the scope of work. Whatever were the terms of the original permit did not change; the Board extended whatever Mr. Lever applied to do, or else the owner needs to come before the Board. Mrs. Pedone added that Mr. Ali must stay within the scope of the permit. Mr. Hebert then supposed, that since Mr. Ali never met with this board, the ZBA and Building Inspector issued a permit and building permit without anything being submitted to the Town. Mr. Benson responded with the history of the Comprehensive Permit: in 2008 was the request for the Comprehensive Permit; Mr. Lever had multiple hearings before the Board; the Comprehensive Permit was laid out regarding what the owner could do. Regardless of the owner, the documentation has not changed. Mr. Benson added that he has never personally met Mr. Ali, and he would have to come before this Board if he wants to make any changes to the permit; Mr. Ali did not come before the Board even regarding changes for Afra Terrace's Comprehensive Permit, and the Board rejected Mr. Ali's requests for that.

Mr. Hebert then asked if there is a building permit issued to Mr. Ali, shouldn't there be plans on file? Mrs. Pedone responded that 94 units were approved in 2008, and the Building Inspector's action on this should be on file; the ZBA has nothing to do with the Building Inspector.

Mr. Benson then emphasized that this Board is not blaming the Building Inspector for anything; they have no control over him and are separate from him.

Ms. Isgro opined that the project's eligibility letter is site specific. Mr. Benson responded that the ZBA is not an enforcement agency; they review what is brought before them. If a person gets a building permit approved, the ZBA does not police that, and the person needs to take up their concerns with the Town. Ms. Isgro continued, that the ZBA in 2008 (of which she was a member) approved changes but the owner never came back. Mr. Benson responded that, in order to record the permit with the Register of Deeds, the ZBA had to approve it.

Denise Forhan of 21 North Main Street spoke next. She asked if anyone felt obligated to notify the abutters of the extension request, and also, why would the applicants renew such a short time before the permit was to elapse? Mr. Benson responded that Barre Savings Bank came before the Board requesting the extension, as the property was in foreclosure and they were the owners at the time.

Mr. Reilly then opined that the abutters have the right to be notified of an extension request or a change in ownership. Mr. Meindersma responded that all abutters were notified at the time the permit was issued, and the permit is a matter of record at the Registry of Deeds and the language of the Comprehensive Permit binds the Board.

Mr. Benson said that it was his understanding that Mr. Lever pulled the permit. Ms. Isgro responded that he never did, and she claimed that the Building Inspector said that it elapsed, so there is disagreement that that it was a viable permit.

Next to speak was Donald Dill of 24 Stillwater Heights Drive. He opined that, without a building permit, the Comprehensive Permit has no weight. He recounted how the Building Inspector gave Mr. Ali a building permit, then a Cease and Desist Order because Mr. Ali had to supply certain money and information or the building permit would be rescinded. Mr. Ali has issues with the Fire Department, and is required to make changes. On May 8, the Building Inspector took away the building permit. Mr. Benson responded that if a Cease and Desist Order is issued, the project cannot go forward; if the Board needs to take action, Mr. Ali must submit something to the Board.

Mr. Dill then spoke about tree removal that was taking place on the property, involving the need to notify those in charge of removing trees involving the Asian Longhorned Beetle, and added that there are certain restrictions such as trees removed must be ground on the property, and cannot be taken out of town. Mr. Dill expressed surprise that this was not addressed by the Town (to his knowledge). Mr. Benson responded that the ZBA has limited authority, and opined that it is one small aspect of the Town. Mrs. Pedone added that all

present live in the same Town, and opined that this issue affects all of them and matters to all of them.

Ms. Isgro suggested that, in the future, when activity is to take place, that the abutters be notified. Mr. Benson responded that ZBA can do that if the Building Inspector tells an applicant that, in order to receive a building permit, he must have ZBA approval. In this situation, Mr. Ali would have to appear before the ZBA. In the time that the current Board has been serving, the only item before the Board regarding the 94 North Main Street property was the permit extension on 5/28/13. Ms. Isgro then suggested that the Board should have taken a vote on “substantial change.” Mr. Benson responded that there was no change in the project. Ms. Isgro added that a “substantial change” requires a hearing, and Mr. Benson responded that Ms. Isgro’s ZBA approved the permit originally. Ms. Isgro continued, opining that the permit is owner-specific, and Mr. Benson responded that, if Mr. Ali comes before the Board, then they can act upon it at that time.

Mr. Reilly then asked if the State Housing Dept. forced approval of the Comprehensive Permit by the ZBA in 2008, and Ms. Isgro and Mr. Benson both replied “yes.” Mr. Reilly then asked who is the Building Inspector’s “boss?” Mr. Benson replied that he did not know.

Ms. Isgro then thanked the Board for their patience. Mr. Benson, to clarify, added that the ZBA is a quasi-judicial board; if the Building Inspector denies a request, the applicant can appeal that and appear before the ZBA for review, but the ZBA has no supervision over the Building Inspector. Mr. Hebert then asked, if members of the public send a letter to the Building Inspector and disagree with his decision, can they go to the ZBA for help? Mr. Benson replied that they would have to file a petition. Ms. Isgro then referred to paragraph 25 in the permit, which stated that the applicant can request a one to three year extension, and Mr. Benson responded that Town Counsel reviewed the request.

Mr. Hebert then asked Mr. Benson if he would reconsider the decisions made, and Mr. Benson replied that this was brought up to Town Counsel. Then, at 8:39 p.m., Mr. Meindersma moved to close the discussion to public comment, and Mrs. Pedone seconded. All were in favor. Mr. Benson opined that it was not necessary to vote on the response to the complaint. He was named as respondent to the complaint, and if no one disagrees, he will proceed with the response to the Attorney General’s office. Mr. Benson then closed the Open Meeting Law Complaint discussion.

Public Hearing, Hazel Wood Hopkins, Petition for Sign Variance, Dollar Tree, 137 West Boylston Street:

(Heather Dudko represented). Mr. Benson stated that the petitioner had submitted the petition. He asked Ms. Dudko if the applicants had seen the opinion letter from the Planning

Board (on file), and she said they had not, so Mr. Benson gave her the opportunity to come back before the Board after reviewing the letter; Ms. Dudko decided to read the letter at this time, and continue with the hearing tonight.

Ms. Dudko stated her address and that she was representing the sign installer for the above location. She mentioned the letter received from the Building Inspector, rejecting the applicant's request to install a proposed sign at the above address. She gave the background of the proposed project. Dollar Tree is taking over space in the plaza at that location. The applicants are proposing a 96 square foot internally-lighted sign, with a 36" letter height, and a sign band of 4'2", allowing ample room for the letters. This proposed sign would be larger than what is allowed by Zoning Bylaws, but since the plaza is set back from the street and frontage, the applicants feel that the proposed size should be allowed; they feel that the allowed 26 square feet is too small for the façade of the building. She mentioned that there is a free-standing sign at the entrance of the plaza. Their property was formerly a Hallmark store, and it does not have a sign now. An aerial map (on file) shows the other tenants of the plaza, but Mr. Femia pointed out that some are not there any longer, and Ms. Dudko agreed.

Mr. Benson asked what the size was of the previous sign, and Ms. Dudko replied that she did not know, but that there was not a previous variance on it. She continued that she feels that the proposed sign would be an appropriate size, considering the distance between the sign at the entrance of the plaza and the Dollar Tree, a new store to the plaza.

Referring to photos of the proposed sign, Mrs. Pedone asked which would be the actual size of the sign, and Ms. Dudko clarified the letter sizes and asked the Board to also provide possible options.

Mr. Witkus asked about the sizes of other signs in the area and opined that, if the Board approves the petition, other applicants for the same type of request should be approved also. Mr. Benson added his opinion that other businesses in the plaza might ask for the same treatment.

Mr. Femia asked Ms. Dudko if she has observed signs in other plazas in West Boylston, for example, the plaza containing Salter School, where there are no signs on the stores, but only on the road. Ms. Dudko replied that their request is based on Dollar Tree being a new tenant, and on their frontage. Mr. Femia opined that it would not be a problem for people to find the store there.

Mr. Meindersma asked if the tenants were leasing, and Ms. Dudko replied that they are.

Mrs. Pedone expressed the concern that, if another tenant leases the store, they would be grandfathered in to this sign variance.

Mr. Witkus added that the Planning Board is working on increasing the allowance for sign size.

Mr. Meindersma then asked if the lease is for the space as a whole (there being 3 storefronts), or will the store be separate from the others. Ms. Dudko replied that the applicants are leasing 7,666 square feet. Mr. Meindersma asked, if the applicant leases 3 storefronts, would they need 3 signs? Mrs. Pedone continued that, if the lease is for the 3 storefronts combined into one, and if Dollar Tree decides to leave, there could still be 3 storefronts there. Mr. Meindersma and Mrs. Pedone supposed that the applicants could put “Dollar” on one sign and “Tree” on another, or that there could be 3 separate signs if 3 businesses were to lease there one day. Mr. Femia opined that whoever owns the plaza owns these 3 stores, and if the board grants this petition, they would have difficulty refusing any other similar petitions from other occupants of the plaza. Mr. Meindersma opined that he did not see any circumstances of hardship to justify granting of the variance. Mr. Benson said that it would be an issue for the Building Inspector, not the ZBA. Ms. Dudko responded to the comments of the Board, saying that she does not believe that the applicants would do the things mentioned, as what is proposed is what is considered the “corporate look.” Mr. Femia re-visited the point of, should Dollar Tree leave the plaza, the owners of the plaza could rent to one large business or 3 small ones. Mrs. Pedone expressed the concern that the next business to rent could have a 96-square foot sign. Mr. Femia then asked the board if they should perhaps continue the hearing, and if they have questions for the Building Inspector? Mr. Meindersma replied that there are no questions from the Board for the Building Inspector. Ms. Dudko then replied that she wants to settle this issue tonight, as the store is scheduled to open on May 23.

With no more comments or questions from anyone present, Mr. Cahill moved to vote on the request for variance. Mr. Meindersma seconded. All in favor. Mr. Meindersma then moved to vote to accept or deny the petition. Mr. Cahill seconded. All in favor. Mr. Benson informed everyone that a “yea” vote approves the petition, and a “nay” vote rejects it. The votes were as follows:

Mr. Benson-“nay”

Mr. Meindersma-“nay”

Mr. Cahill-“nay”

Mrs. Pedone-“nay”

Mr. Witkus-“nay”

Mr. Benson announced that, with 5 “nay” votes, the petition was denied.

Minutes of March 17 Meeting:

Mr. Meindersma moved to open the discussion of approval of the minutes. Mrs. Pedone seconded. All in favor.

After review and discussion of the minutes, with some changes made, Mr. Meindersma moved to approve the minutes as amended. Mrs. Pedone seconded. All in favor.

May Meeting:

The May meeting was scheduled for May 19. With the Town Meeting taking place on that evening, the Board decided to cancel the May meeting, and postpone until the June 16 meeting. Mr. Benson will notify the applicant, Borrego Solar Systems, Inc., who would have been on the May 19 agenda, that they will appear on June 16 instead.

With no more comments, Mrs. Pedone moved to adjourn the meeting at 9:32 p.m. Mr. Meindersma seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____