



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

April 30, 2015

Chairman: John Benson

Members Present: John Benson (Chair), Jon Meindersma (Vice-Chair), David Femia (Full Member as of 4/29/15), Kristina Pedone and Charles Witkus.

Others Present: Barur Rajesh Kumar (Associate Member as of 3/24/15) and Secretary Toby Goldstein.

Members Absent: Paul Hennessey (Associate Member).

Mr. Benson called the meeting to order at 7:20 pm. He read aloud the names of members present. He then announced the first item on the agenda, the Public Hearing of Surabian Realty, Inc., Petition for Variance, 184-186 West Boylston Street.

Public Hearing, Surabian Realty, Inc., Petition for Variance, 184-186 West Boylston Street:

(Representatives were Andy Surabian, owner, his son, Anthony Surabian, and from Redi-Sign Express, Ralph St. Germain). Mr. St. Germain began by discussing the proposed work. He said that the applicants wish to move the current sign of Wachusett Plaza located in the middle aisle, and the tenant up front on the pad site (he indicated where on a map of the site). At this time, the sign is 10 feet from the edge of the property, but they intend to move it to approximately 40 feet back. He explained that there are several reasons why the applicants are seeking the variance to make the sign larger than what is currently allowed by the bylaws. One reason was that, as the sign would be moved further back from the road, it would need to be made bigger. Also, as the building itself is 600 feet off the road, it would be hard to see it. And, he explained that, as the applicants wish to build a building on the smaller side of the plaza which will contain (2) tenants, (2) sign spaces are required for them.

Mr. St. Germain then showed a drawing to scale of what is currently in the plaza. He explained that the number of tenants in the plaza will increase to 16, so the height of the sign panels

would get progressively smaller; it would be more difficult for customers to read from the road, so he stated that customers would be more likely to make fast, last-minute turns into the plaza, which would be dangerous. He continued that a 30 square foot sign is allowed over each store but he stated that this would not be adequate in size, and also, the owners do not have a large advertising budget to make separate signs for each store. These are reasons why the applicants need relief from the ZBA to have a larger size of sign. Mr. St. Germain then discussed what was currently allowed by the bylaws for sign size. He stated that a 15-foot sign is allowed, but the applicants are proposing a 30-foot sign so that they could increase the letter height to 12 inches. The overall square footage of the sign would be 300 square feet. He mentioned that the size of the sign at White City is 800 square feet, and added that the applicants only want 220 square feet of actual sign face so that they can make the sign look nicer. Mr. Benson asked them, isn't the point of the bylaw is to have uniformity? Mr. St. Germain replied that some leeway was needed if what is allowed in the bylaw is inadequate, and Mr. Surabian added that, if they leave the size as the bylaw allows and add tenants, then they would need to shrink the other tenants' signs. In summary, Mr. St. Germain stated that the reasons that the applicants need relief are hardship, the setback to 40 feet, to increase the number of tenants, and for safety of those entering the plaza, and also for aesthetics.

Mr. Benson then asked if they thought that every plaza would then want to double the size of their signs? Mr. St. Germain and Mr. Surabian replied that their sign is now at 200 square feet and only want to increase it to 220 square feet, and it will be 10 feet taller because they do not have the room to make the sign wider. They also replied to a question from Mr. Benson that they do not have topographic limitations.

Next to speak was Chris Lund, Building Inspector and zoning enforcer. He noted that the bylaw is at odds regarding the fact that this plaza will have many more tenants than the minimum standard of three. Also, 8 square feet is required per tenant; in this case, there will be 16 tenants. Mr. Lund added that, also in the bylaws, regarding business centers, there is a limit to the number of tenants and 20% of the square footage is to go towards the plaza sign. Also, he mentioned that the bylaws have a requirement for landscaping, and opined that their efforts would beautify the neighborhood and add value to the property. Mr. St. Germain added that the square footage allowed is 64 square feet per person, but they will only need 54 or 44 square feet for the tenants.

Mr. Benson asked if there will be new buildings on the sign? Mr. Surabian replied that only the building with (2) tenants will be, at the beginning of the property.

Mr. Meindersma asked if there are any vacancies? Mr. Surabian replied one, but it has been rented. Mr. Meindersma asked if the sign will face the road, and Mr. St. Germain replied that it

will be perpendicular, so that it can be seen from both directions, and added that it will be lit internally by LED and opined that it would be “classy.”

Mr. Benson then asked Mr. Lund if there was a limit to not more than 12 tenants in the plaza? Mr. Lund replied that, as long as the building load handles it, there can be as many tenants as the owner wants. Mr. Benson then asked, if there are greater than 12 tenants, would the subsequent tenants not occupy part of the sign? Mr. Lund responded that the bylaw is strict and does not take into account more than 12 tenants, and affects who wants to be in the plaza.

Mrs. Pedone then asked what was the square footage of the sign for Walmart in their plaza? Mr. St. Germain replied that the sign is 64 square feet on the wall, and the pole sign is 40 square feet, with 5 ½-foot tall letters.

Mr. Witkus then asked how tall the Walmart sign was? Mr. St. Germain replied that is it 20 feet from the ground to the top of the sign. Mr. Meindersma asked about the detail that, if all the sign panels were to be two-feet tall, they would have 12-inch letters? Mr. St. Germain replied that they lose 4 inches to retainers, and end up with 14 inches the highest installed (he showed the Board a diagram).

Mr. Benson then asked if the applicants would need relief for the setback? Mr. Surabian replied that they really don’t need one; the relief would be for moving the sign and enlargement. Mr. St. Germain mentioned that the Cumberland Farms intended to locate in the plaza will put up their own sign. Mr. Witkus asked, if the number of tenants increases, are they added to the sign? Mr. St. Germain replied “yes.” Mr. Witkus also asked if the size of the business affects how much space it has on the sign? Mr. Surabian and Mr. St. Germain replied that the size of the space corresponds to the size of the business on the sign. Mr. Surabian added that there are now 14 businesses in the plaza, and they will be adding 2 for the new building. He said that he will build a new sign for the new building, in which he will have his business, but will give it up if a new tenant moves in. Mr. Femia asked Mr. Surabian if 16 is the maximum number of tenants, and Mr. Surabian replied by explaining the breakdown of number of tenants, including that Planet Fitness took the space of 4 tenants, but if they leave one day, that would leave 4 spaces.

Mr. Witkus then asked about the construction of the sign, and Mr. St. Germain and Mr. Surabian explained that it would be constructed of foam or aluminum, with steel poles. It would have a steel frame and be aluminum-wrapped, with polycarbonate faces and LED lighting and would have columns.

Mr. Benson then asked Mr. Lund, if the main building will be separated from the second building by a fair distance, would it be considered in the same plaza? Mr. Lund replied that it would be, and the Planning board approved it previously, the building footprint is on

Conservation land, there is a retaining wall, so only one-way access to the building, and that entrance becomes part of the plaza. Mr. Lund asked about the heights of building in the plaza, and Mr. St. Germain replied that the sign for Salter School is 30 feet. Mr. Witkus asked if the Planning Board has given any guidance in the matter, and Mr. Lund replied that this does not go to Planning Board; they are allowed to comment when the petition is filed, but they have no jurisdiction on the sign.

With no more questions from the Board or anyone else present, Mr. Meindersma moved to close the hearing to public comment. Mrs. Pedone seconded. All in favor. At this time, the hearing was open to deliberation by the Board. Mr. Meindersma opined that the bylaws do not contemplate that many tenants, and that the proposed sign would be safer and aesthetically-pleasing. Mrs. Pedone added that they like how it would look, and that the bylaw does not accommodate a plaza with 16 tenants, and the sign would be away from the street. Mr. Witkus asked how far away one would have to be to see 12-inch letters, and Mr. Meindersma replied 300 feet; Mr. St. Germain added that a customer would have to signal (on his vehicle) 300 feet from the sign. Mr. Witkus asked about the design of the sign, and Mr. St. Germain replied that they do not follow architectural formats; Mr. Surabian replied that they wanted something that would look very nice. Mr. Femia asked, if there is a tenant on the larger side, if a customer drives up the hill, would they be able to see over that other tenant's sign, and Mr. Surabian replied that their sign is on the other side.

With no further comments or questions, Mrs. Pedone moved for the board to vote. Mr. Femia seconded. All in favor. Mr. Meindersma moved for a vote to allow the requested variance and grant the petition as submitted; a "yea" vote would be a vote to grant the variance. Mr. Femia seconded. All in favor. The vote was as follows:

Mr. Benson – "yea"

Mr. Meindersma – "yea"

Mr. Femia - "yea"

Mrs. Pedone – "yea"

Mr. Witkus – "yea"

The Board signed the vote sheet, which will be submitted to the Town Clerk to be stamped.

Discussion With Richard Heaton of the Affordable Housing Trust:

Mr. Benson announced that the next matter of business was a discussion with Richard Heaton regarding the Afra Terrace and 94 North Main Street affordable housing projects. Mr. Heaton

introduced himself, stating that he works for the Affordable Housing Trust (AHT) and offers his services to the Town to monitor the affordable housing in West Boylston. The first project that he mentioned was Afra Terrace, whose Comprehensive Permit was granted in 2005 and which is substantially complete but there are certain open issues (Mr. Heaton referred to this as “Alpha Terrace” and it was corrected for the record by Mr. Meindersma as Afra Terrace). Mr. Heaton continued that he is reviewing the open issues, identifying those that are appropriate for ZBA and those that are appropriate for the focus of other boards; he will make recommendations and put out facts, but not make decisions.

Mr. Heaton then stated the issues. First of all, it has not been clear where the affordable units are located; that has been modified, and the Assessor’s records differ from AHT’s records. Next, he reported that three units have not been sold in five years, which were designated by the Town to be occupied by those needing them; there are possible solutions, but they need to be addressed. He mentioned that several units have been rented, but the regulatory agreement and deed riders do not allow for that. Mrs. Pedone, to verify, added that the project was approved in 2005 as 54 units; Mr. Ali corrected that as 52 units. Mr. Heaton responded that it was approved for 52, with 13 affordable units to be sold. He continued that there is confusion about the “as-built” plans: the condo association documents need to be approved by the Town; when the project is completed, cost certification needs to be done, where the developer’s profit is limited to 20% - this requires a formal process, which should have been done years ago but nothing has been seen about it. Mr. Heaton proposed that they need to sit down with the developer to discuss these matters. (Mr. Benson opined that this discussion was helpful, and wanted to thank AHT for extending Mr. Heaton’s services).

Mr. Heaton continued with a discussion of issues regarding 94 North Main Street. He mentioned that, in 2004, 68 units were approved, and since then there had been several appeals, and change in ownership. He continued that the developer wants a building permit, but the Building Inspector needs proof that the developer fulfilled the regulations of the Comprehensive Permit. Mr. Heaton proposed that the developer meet with himself, ZBA, and the Board of Selectmen to review the recommendations.

The Board asked if there is a time frame within which they need to have a meeting to discuss materials submitted by the developer, Mr. Ali? Mr. Heaton replied that it would have to be within 30 days; he will inform the Board as to the definite time frame. In response to a comment from Mr. Witkus stating that 96 units were approved for this project, Mr. Heaton replied that the original decision approved 68 units, but after appeals, the amount approved was 96 units. Mr. Heaton added that the developer believes that he has approval. Mr. Benson reiterated for Mr. Heaton to let the Board know of the time frame.

Discussion With Ruane Property Management Regarding Afra Terrace Issues:

(Ellen Ruane and Andrea Austin represented). Ms. Ruane addressed the Board first, giving background information. She stated that they are the property managers for Afra Terrace, hired by the Board of Trustees for Afra Terrace. She continued that, in August, the Trustees spoke of their concerns regarding the project to several Town boards; they wanted an engineer to review “as-built” plans delivered by the developer to the Town, and also requested a copy of those plans. Ms. Ruane also wanted to discuss the fact that the owner of one affordable unit lives in California and is renting his unit, and she does not believe that this is allowed. Ms. Austin added that they did not find a clear answer to this question, but based on the project documentation, it appears that this is not allowed. Mr. Femia asked Mr. Heaton if this is written on the deed rider? Mr. Heaton responded that, if it is an affordable unit, it cannot be rented to a different occupant. Mr. Benson asked if there is recourse? Mr. Heaton replied that it is not defined, and that the Town Administrator was sending a letter to the developer advising him of the terms and conditions. He added that someone would need approval from CHAPA to be allowed to rent. Mr. Benson then asked what the ZBA’s enforcement power is, regarding this issue and the “as-built” plans? Mr. Heaton replied that he would discuss that later.

Ms. Ruane then asked if the Town has an engineer to review “as-builts?” Mr. Heaton replied that the Conservation Commission and perhaps the Building Inspector will be involved in that. Mrs. Pedone asked if the Trustees have their own engineer to review the plans, and Ms. Ruane replied that they do. Mr. Benson asked her if they could wait 30 days for Mr. Heaton to give his opinion? She replied that they could.

Ms. Austin then discussed another unit which may have 8 to 9 occupants in a 3-bedroom unit. Mrs. Pedone asked Mr. Lund if this is allowed considering the square footage and 3 bedrooms of the unit? Mr. Lund replied that 200 square feet per resident is required, per building code; he said that they would have to confirm the living space. He continued that this is not an issue according to building code, and he does not count number of occupants or enforcement, only if there is significant risk to safety. Mr. Benson asked Ms. Austin how they know about this, and she replied that several residents told them. One Board of Trustees member who was present at the meeting added that he heard of two married couples living in one unit. Mr. Benson asked him how he found out this information, and the resident replied that there are more than 6 cars at the unit. Mr. Lund continued that public health code has jurisdiction also. The Board members and others present proposed that perhaps those people are registered as living in the same place, or they may not even have responded to the Town census. Mr. Benson continued that first, they should determine if it is allowed to have 8 or 9 people living in one unit, and if that is not allowed, determine how to determine the actual number, and is that prohibited under 40B; if it is not prohibited, ZBA cannot act, and if it is, how does ZBA enforce it?

Ms. Ruane added that the unit in question has had problems following tenant association rules; letters have been sent to them, and they have not complied.

Mr. Lund responded that if trash is a problem, that would be under the jurisdiction of Board of Health. The resident who spoke before asked if condo fees are lower for 40B units, or other fees? Mr. Benson responded that he would be surprised if code was that specific. Mr. Meindersma opined that those are private enforcement issues under the condo association bylaws, not the Town's zoning bylaws. Mr. Heaton explained that the Town agreed to review the condo association documents and make sure that they are consistent with those of other communities and that they protect the residents. Ms. Ruane added that they would like a copy of the landscaping plan and do not feel that the landscaping is what it should be. Mr. Heaton replied that he will look into that. Ms. Ruane explained that in August, 2014, the Board of Trustees requested to hold the occupancy permit of the last unit sold until all issues were resolved, such as drainage and landscaping, because when the last unit is sold, the developer's involvement is done. Ms. Austin added that the last regular unit is to be sold, leaving two affordable units. A Trustee mentioned the fact that the Town does not have a bond from the developer, and he opined that if all the units are sold, why should the developer bother to provide an "as-built" plan? Mr. Benson responded that Mr. Heaton is looking into that, and mentioned that there are drainage issues in particular. Ms. Ruane responded that the Board of Trustees has hired an engineer to go through those areas. Mr. Benson asked her to have the engineer share his information with Mr. Heaton. Mr. Lund added that, for a Certificate of Occupancy to be issued, all boards and department heads involved must be satisfied with what they received; this must be included in a Certificate of Occupancy. Mr. Benson continued that since the Board of Trustees addressed the ZBA last year, the board has not acted to approve anything. Mrs. Pedone added that the board has not received anything since then, either. Mr. Lund continued that three certificates of occupancy are still outstanding, and none have been issued since. Ms. Austin said that the 2 Jasmine Drive unit was sold, but asked if an occupancy permit was issued? Mr. Lund replied that it probably was inspected before the sale and all requirements were fulfilled, but it comes down to the last unit for all boards' approval. He added that, with any 40B, ZBA is involved, and it is important to keep communication open.

Next, another Trustee remarked that, if they are at the point where one unit is not sold, and it has no occupancy permit, that the developer could do nothing and just let that situation continue. Then, Mr. Femia asked Selectman John Hadley (who is also a member of the Conservation Commission) if Concomm has received an "as-built" yet? Mr. Hadley replied that they have not yet received a final "as-built" that has been compared to the original site plan so that Concomm can sign-off on it. Mr. Lund added that there is an "as-built" but that it has not been certified yet by an engineer of the applicant that the Order of Conditions has been satisfied. Ms. Ruane asked if the Town will have an engineer look at it? Mr. Hadley replied

“yes.” Ms. Ruane and Ms. Austin said that they want copies of the “as-built” and any other plans. Mr. Benson said that they will be invited to attend the ZBA meeting when Mr. Heaton reports his findings. Mr. Meindersma suggested that, if it takes 30 days for Mr. Heaton’s findings, perhaps they should attend two meetings from now.

Minutes of March 23 Meeting:

After review of the minutes by the board members, Mr. Benson asked for any comments or changes. (Mrs. Pedone proposed that the minutes should be pre-read, prior to the meeting). After suggestion of a change, Mr. Meindersma moved to accept the minutes as amended. Mr. Femia seconded. All in favor.

With no further business to discuss, Mr. Meindersma moved to adjourn the meeting at 8:50 p.m. Mr. Femia seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____