



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS
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MEETING MINUTES

May 28, 2015

Chairman: John Benson

Members Present: John Benson (Chair), Jon Meindersma (Vice-Chair), David Femia, Kristina Pedone and Charles Witkus.

Others Present: Barur Rajesh Kumar (Associate Member) and Secretary Toby Goldstein.

Members Absent: Paul Hennessey (Associate Member).

Mr. Benson called the meeting to order at 7:42 pm. (Iqbal Ali requested a later start in order to wait for his consultant, Dean Harrison, to arrive from out of town). Mr. Benson read aloud the names of members present, and that the first item on the agenda was continued from the previous meeting (May 14), that of issues regarding 94 North Main Street; it was agreed on 5/14 to continue the discussion to today. The issues were:

1. The approval of MHP as the subsidizing agency for the project.
2. The approval of the transfer of the Comprehensive Permit to Sajda Gardens, LLC, with Mr. Ali and Crescent Builders as the sponsors, according to the bylaws, Section 760 CMR, where a permit may be transferred and this is not considered to be a substantial change.
3. The approval of Jerome Dixon as architect.

Regarding MHP approval, Mr. Benson stated that he asked Town Counsel for her input on the matter (and other issues regarding the project), and she e-mailed him a response letter on May 28 (on file). She continued, that when ZBA approved the Comprehensive Permit, no specific subsidizing agency was given to be used; but, if the terms of the financing conflict with the permit, Sajda Gardens LLC may have to request a modification to the permit. Mr. Ali and Mr. Harrison agreed to this.

Richard Heaton, Affordable Housing Consultant, continued that he recommended that the board approve the transfer to Sajda Gardens, LLC, as the original Comprehensive Permit was addressed to Crescent Builders; he wanted this to be addressed in the minutes. Mr. Harrison responded that, when they applied to MHP and obtained subsidizing, the permit was in the name of Sajda Gardens, LLC, with Mr. Ali and Crescent Builders as sponsors; Mr. Ali reiterated this.

Next, Mr. Witkus asked Mr. Heaton how the project changed from having only unit owners to allowing unit rentals? Mr. Heaton replied that the project started as rentals, approved by ZBA, and then approved by HAC as rentals; then ZBA developed a modified Comprehensive Permit, allowing rentals or owned units, and that the owner at the time did not do that, but since then the option has been exercised. Mr. Witkus responded, as a member of the ZBA at that time, that residents were supposed to own the properties and rental was not what the board wanted at that time. Mr. Benson responded that the project was approved by HAC for rental, but that was decided already and was not before the board this evening.

Next, Mrs. Pedone, Mr. Benson and Mr. Meindersma discussed whether to discuss all the aforementioned issues first, and then ask for public comment, or to discuss each one individually and ask for public comment after each one is discussed. Mr. Benson decided that they would cover all of them at one time and then ask for public comment.

Mr. Benson next stated that the second item on the agenda was transfer of the Comprehensive Permit to Sajda Gardens, LLC; for the record, Mr. Meindersma corrected that this item was not listed on the agenda, but was discussed in Town Counsel's letter. Mr. Benson then read Town Counsel's comments in the aforementioned letter that transfer of a comprehensive permit to a third party did not constitute a substantial change; therefore the ZBA can treat it as insubstantial and approve it. Mr. Heaton concurred with this opinion; Mr. Ali and Mr. Harrison agreed.

Next, Mr. Benson discussed the architect; Town Counsel gave her opinion - no provision identified the architect of record, so ZBA does not need to take any action. Mr. Heaton concurred, and Mr. Harrison had no comment.

The next item for discussion was endorsement of the ANR plan by the board. Mr. Benson informed those present that the Planning Board reviewed the plan, as they had significant experience in that matter. Marc Frieden, Planning Board Chair, discussed his findings in reviewing the ANR plan. He mentioned that the ANR plan takes the property and defines its boundaries; the original property was larger with greater frontage; and the applicant wants to break it up into (3) plots. Mr. Frieden continued that, although the property used to have legal frontage, even though it does not conform now, because of 40B rules they approved it. He

added that this drawing refers to the original owner, being called the Village at Oakdale Association, and opined that it would be a good idea to update it as the engineer, Marchionda, produced it six years ago, but even if updated, it was Mr. Frieden's opinion that it would not affect the information on the drawing regarding property lines and that the developer can move forward. Mr. Frieden added that it would be helpful for the developer go submit a locus plan of where the project is located in the Town. Also, when Planning Board endorses a plan, they are recognizing the plan; there is a note from ZBA on the plan, which indicates that ZBA is acting for Planning Board, and he would prefer that Planning Board type a note on the plan. Mr. Frieden continued that this action is so that the developer can move along, but ANR plans are changeable; if the developer wants to change it, they can make a new ANR. Mr. Frieden also did not think that it would be a big risk to sign it.

Mrs. Pedone then asked Mr. Frieden, based on the engineer's stamp on the plan, and that it was reviewed, signed, dated and stamped by the other ZBA at that time, if it was reasonable to say that this was the original ANR plan? Mr. Frieden replied that there was no reason not to think so. Mr. Benson then read from the amended decision on the Comprehensive Permit, dated 10/3/08, that the board shall approve and endorse the plan dated 9/15/08. Mr. Frieden opined that, if it is a different plan, that it would not be very important. Mr. Meindersma then asked, why the plan was not approved previously? Mr. Heaton opined that there were many loose ends at the time. Mr. Meindersma then asked if ZBA was a proxy for the Planning Board? Mr. Heaton replied that ZBA acts for Planning Board in these cases, but can get Planning Board's advice. Mr. Meindersma asked, if approval is not required, does ZBA need to approve it now? Mr. Frieden replied that the Town has to be made aware of anything different in the project. Mr. Benson added that the board was directed to sign this plan as part of the agreement in 10/08. Mr. Frieden then asked Mr. Heaton, referring to the fact that the developer wants to create three lots, one of which was gifted to the Town for conservation purposes, if this was still true? Mr. Heaton replied that if this was part of the decision, he believed that it was still true. Mr. Femia then asked Mr. Heaton, if the Town does take the aforementioned lot, how would that affect the percentage of affordable housing for the Town? Mr. Heaton replied that he would get back to the board about that.

Mr. Benson then asked Mr. Ali and Mr. Harrison if they had anything else to add? Mr. Harrison replied that they kept the plan approved by AHT. Mrs. Pedone asked if they had anything else to present to the board? Mr. Harrison replied that there are some items required by the board; the developer has updated plans, but they are not final sets of plans; there have been changes such as to architecture and roof line and the updates are for informational purposes. He continued that any previous drawings not part of the Comprehensive Permit are not applicable anymore. Regarding permits, they are making a set of construction documents and will request any changes from the board. Mr. Heaton then asked Mr. Harrison about the roof design, and

Mr. Harrison replied that, in the original HAC decision, which incorporated the original conditions in 2006, the roof was to have a hip roof design, and the developer is staying with that.

Mr. Ali then submitted binders to the board that contained copies of all relevant documents for the project; he had agreed to do this at the May 14 meeting. He showed the board the landscaping plan and said that he needs to indicate snow removal areas and look through it to see how it affected the neighbors. (Mr. Benson reminded Mr. Ali that this was for informational purposes only, not for approval).

Mr. Harrison next wanted to discuss two items. First was the lighting, on the plans submitted named, "Site Drawing." They reviewed the lighting plan with the board.

Next, regarding construction regulations to maintain, a part of the original decision included times at which they can do work; this was upheld by HAC, and they must uphold that. Mr. Harrison mentioned some examples, such as dust control, removal of debris, not working on Sundays, before 7 a.m. or after 5 p.m., etc., and said that they will give more detail than only the "best practices" that was instructed.

Mr. Harrison also said that, as was stated in the HAC decision for the original permit (Mr. Lund added Condition 29 of the amended decision), conditions 3, 4, 8-10, 15,21,26,30-34, and 39 of the Comprehensive Permit were reinstated, and they will comply with them.

Mr. Meindersma then commented that the two letters submitted by Mr. Ali at the May 14 meeting were similar but not the same, and asked those present if the board had captured everything regarding the four items of discussion? Mr. Ali replied "yes" and also the landscaping plan and plan for snow removal. Mr. Meindersma verified that these items are all that the board had before them this evening (Mr. Ali replied "yes"). Mr. Benson then opened the meeting to public comment.

Linda Isgro of 58 Scarlett Street spoke first. She stated that she agreed with Mr. Witkus that the biggest contention was if the units were for rental or needed to be purchased, and mentioned that the amended decision stated that the occupant could rent or own, and opined that the board should know how many of each kind and which ones of each kind of unit exist at this time, and that this could involve a substantial change.

Next, Ms. Isgro discussed that the ZBA board on which she sat approved the project for two lots, one for the Town to be left in its natural state, but that last summer, clear cutting of foliage took place on that lot. She expressed concern that the Town should know who is funding the project, how many units are there, and what type of units (rental and owned); then it would be possible to know if substantial change would take place. She also mentioned that

the buildings have moved with regards to the original plans, and that the abutters are concerned, and if this is greater than a 20% change, it would be substantial.

Mr. Benson responded that the issue this evening was the ANR plan, and the board was not asked to approve any changes at this meeting. He continued that substantial changes could exist, but none of that was before the board at this meeting.

Ms. Isgro responded, that in order to see if a public hearing will be needed to vote upon substantial change, that the board needs to see what was reviewed and approved. Mr. Benson responded that the 2008 decision specifically says that this ANR plan, signed and stamped 9/15/08, must be signed by the board.

Next, Mr. Witkus and Ms. Isgro discussed the number of units approved for the project originally, with HAC deciding upon 96. Mr. Heaton added that HAC approved what the ZBA sitting at that time wanted, which was 96, and asserted that the 2008 decision was the only one on record to decide all the parameters of the project.

Mr. Harrison spoke next. He explained that MHP, the subsidizing agency, does not work with construction loans, so that Rockland Trust is doing that. He said that 25% of the residents earn 80% or less adjusted median income. He continued that, according to affordability requirements, at least 25% rented up to 80% median income; 25% of each unit type; the remaining 75% do so at market rate. But, he added, all 100% count towards the SHI, even if at market rate.

David Marcoux of 95 North Main Street spoke next; he asked, regarding the ANR plan, if it is allowed to take a lot and subdivide it so that one of the lots does not meet with the zoning bylaws? He was referring to the lot with a house on it. Mrs. Pedone replied that, at the time it was done, it did comply, but Mr. Marcoux responded that it now is a non-conforming lot. Mr. Harrison responded that the developer obtained a variance with the 40B process in 2008 to subdivide the lots, with one being non-conforming. Mrs. Pedone added that it was approved in 2008 without the required frontage. Mr. Meindersma added that the driveway goes with the project. Mrs. Pedone continued that it has to conform with this plan here, which was recorded in 2008, and there is a non-conforming lot, and added that the clearing in Lot 3 that Ms. Isgro mentioned previously was not before the board at this time.

John Hadley, Selectman and member of the Conservation Commission, asked the board if the four points covered this evening still did not complete the project with them? Mrs. Pedone replied that it did not complete what they need; Mr. Ali still had more to do. She continued that the board was just going to sign the ANR, and cover the four points this evening. Mr. Benson continued that anything outside of the four points needs to be submitted to the board. Mr. Heaton added that the final step will be for the ZBA to approve the final plans to allow the

building inspector to issue the building permit, and estimated that the applicant will probably come before the board with that information in a couple of months. Mr. Hadley added that they still need to sign off on the final plans. Mr. Ali added that the site plan had not changed from what was approved before. Mr. Heaton responded that it would be easier to submit the same plans to ZBA and do everything at once. Mr. Ali asserted that the site plan was the same one as the ZBA already approved, with structural changes according to needs, such as widening of the stairwells.

Ms. Isgro spoke again, mentioning the concerns of whether or not the changes constituted 20% impact, and that the lot promised to the Town had large trees taken down which would be buffers for the abutters. She continued that this was a three-acre lot, to be left in its natural state, which with the clearing now impacts the neighbors, and there is disparity between what was promised and the present.

Mrs. Pedone asked Mr. Lund if the issue of tree cutting in Lot 3 has been addressed? Mr. Lund replied that the ANR is separate from the final site plan. He explained that the ANR clarifies boundaries and dimensions, not site work, and that when the time comes to discuss approval of the final site plan the clearing can be addressed, but not for the ANR.

A former ZBA member who attended the meeting stated that the board should walk the area to see how the project impacts its neighbors. Mrs. Pedone responded that she has been there and has taken her family there, and said that as a taxpayer and volunteer for the Town, she realized that the residents are faced with a difficult situation. She said that she will walk the area and drive by over the weekends to be sure that rules regarding time of work are followed.

Mr. Benson continued that he appreciated the concerns, but that the Town is bound by law and the board cannot take action unless it is its legal authority to do so, and that the landscaping plan was not before them this evening.

Mr. Lund wanted to comment on the site condition, suggesting that the applicant should use erosion controls and there should be some vegetation stabilization. Ms. Isgro commented that she did see haybales there and thought that the land was all set. Mr. Benson added that 40B rules and regulations may waive certain bylaws, but not good building practices. Mr. Frieden added that dust control measures could be needed in the dry weather.

Next, a resident, John Owanisian of 8 Stillwater Heights, opined that the entire process involved was confusing, mentioning Ms. Isgro's concerns regarding the third lot and Mr. Heaton's suggestion of an attorney overseeing the process. He asked the board what steps Mr. Ali had to take to move ahead? He commented that there were still many loose ends and asked what a substantial change was?

Mr. Benson deferred to Mr. Heaton, who replied that a “substantial change” is defined in the regulations and left to the prerogative of the board, who would have to hold a public hearing if that was a possibility. He continued that, so far, there have not been substantial changes proposed, but there will probably need to be a public hearing when all the information of the last several years is considered for the issuing of a building permit. Mr. Benson continued that, if there is a substantial change, there would need to be a public hearing, but until a change is proposed, they cannot say if it is substantial or not; if the change is below 20%, it is considered unsubstantial. Mrs. Pedone added that the applicant would appear before the board and they would review the request; Mr. Benson added that it would be public. Mr. Harrison explained that the natural process would be that the building permit would be issued, or other steps needed for the permit would be determined, but this situation is different because of the history of the project; they will bring to the board anything that differs from the original comprehensive permit.

With no further questions or comments from anyone present, Mr. Meindersma moved to close the discussion to public comment. Mrs. Pedone seconded. All in favor.

The board next discussed the four points amongst themselves. Mr. Benson asserted that the ANR has not changed from 2008 and that the ZBA is directed in the Comprehensive Permit to sign the ANR. Mr. Meindersma continued that MHP has been identified as the subsidizing agency for the project, the Comprehensive Permit has been transferred to Sajda Gardens, LLC, with Mr. Ali and Crescent Builders as sponsors, and the architect of record is now Jerome Dixon. Mr. Benson added that, according to Town Counsel, the choice of architect is not considered a change. After discussion with Mr. Heaton and the applicant regarding need to approve the subsidizing agency, Mrs. Pedone moved to recognize MHP as the subsidizing agency. Mr. Meindersma seconded. All in favor.

Next was the transfer of the Comprehensive Permit to Sajda Gardens, LLC; Mr. Benson noted that Town Counsel ruled this as an unsubstantial modification and asked for a motion to approve the request, as suggested by Town Counsel. Mr. Meindersma made the motion; Mrs. Pedone seconded. All in favor.

Next was the change in architect, and Mr. Benson said that no action was required on this, so no vote needed to be taken.

Mr. Meindersma next moved to endorse the ANR plan, dated 2008, as required in the Comprehensive Permit. Mr. Femia seconded. All in favor. (The board noted that Mr. Ali must pay \$20,000 on June 4 towards peer review, but the board must approve the engineer).

Regarding the engineer, Mr. Benson said that names of potential engineers have been submitted to the Building Inspector, but that matter was not before the board this evening.

Mr. Benson reminded everyone that this matter would not be addressed this evening. Mrs. Pedone asked if the board needed to approve the engineer at a public hearing? Mr. Heaton replied that it would be done at a public meeting, not hearing. Mr. Meindersma asked if they would do this at the board's next meeting? Mr. Ali added that they would like to be able to get the lighting and landscaping plans done. Mr. Lund added that they cannot determine a site plan until an engineer is chosen. Mrs. Pedone suggested meeting before June 18, which would have been the regularly scheduled ZBA meeting, to decide upon the engineer so that they can all move forward, and the board decided to meet on Thursday, June 11, at 7:15, to discuss the engineer; Mr. Benson added that the Building Inspector will be vetting engineers and Mr. Lund said that he would recommend one of three to the board.

Discussion with Mr. Heaton Regarding Afra Terrace:

Regarding Afra Terrace issues, also on this evening's agenda, Mr. Heaton opined that the discussion could wait, and Mrs. Pedone suggested adding this to the agenda for June 11, after discussion of North Main Street, and she added that conducting ZBA elections and approving minutes should also be added to the agenda.

At 9:40 p.m., Mr. Meindersma moved to adjourn the meeting. Mrs. Pedone seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____