

Town of Bellingham MA

10 Mechanic Street, Bellingham MA 02019

Zoning Board Meeting Minutes 06/01/2017

Zoning Board of Appeals Minutes of Meeting June 1, 2017

Present at Meeting

Brian Salisbury, Chairman
Brian Wright, Vice Chairman
Arturo Paturzo, Member
James Dunlea, Member
Peter Gabrielle, Member
James Jeskche, Alternate Member

Other Attendees:

James S. Kupfer (JK) – Town Planner & Zoning Compliance Officer
Laura Renaud (LR) – Zoning Clerk
Jason Talerman (JT) – Town Counsel
Timothy Aicardi (TA) – Building Commissioner

7:00 BS opened the meeting.

New – 1167 South Main Street – Wesley Garner

Special Permit to allow multi-family housing
Sitting In: BS, BW, AP, JD and PG

JK read the Public Hearing notice.

The owner, Wesley Garner explained his property; zoned Suburban was originally a personal daycare for senior citizens. When he purchased it he turned it into a residence and his wife had a business. WG explained if he was to sell he would have to sell it as a single family and he would lose money. He did have it for sale and no one was interested: it is an odd shaped building on an odd shaped lot. There are pre-existing multi-family homes on each side and there is a daycare and church across the street. JK explained he felt that section 240-31 footnote 10 was appropriate for this situation and it is up to the Board to determine if the structure could not reasonably be used for any permitted purpose. The Board discussed a variance request vs. special permit request and agreed a Special Permit was the most appropriate permitting path. While it is currently a permitted use, it very likely could not be reasonably used as a single family home moving forward. WG stated he does have 15 parking spaces, 4 are in a garage, and it is a circular driveway which is blocked off in the back so it cannot be used as a cut through. The configuration of the building would work as it is already has separations and many different rooms. He would only have to add firewalls. There would be no exterior changes. The board discussed what impact 2 additional units would have in the area and what benefit they would be to the town. There were no comments from the audience.

BS motion to close the hearing.
BW second.

All in favor to close the hearing.

AP motion to grant the Special Permit as requested in the application and materials.
BW second.

All in favor to grant the Special Permit as requested. There is a 20-day appeal period.

Continuation – 174 Maple Street – LMP Properties, LLC

Appeal of an order by the Building Inspector

Sitting In: BS, BW, AP, JD and PG

Attorney Gary Hogan (GH) explained they had asked for a continuance so that his client could pursue a Development Plan Approval with the Planning Board. They felt that it was the best way to address the concerns and issues the town has. He stated the applicant has agreed to put up a fence and work with an engineer. They feel that all concerns can be handled through the Planning Board and that they have the jurisdiction to apply that route. They would ask for a continuation and then an extension of 100 days to July 17th. The board questioned as to why a Development Plan vs. a Special Permit. GH explained his client wants to defend the pre-existing non-conforming status but also work with the Town to achieve a common goal of minimizing impacts. His client does not want to take the chance of a Special Permit being denied. He stated it is a 30 million dollar business that is at risk. We need to get to a point where Mr. Aicardi can reverse his findings. The Applicant is making a meaningful effort and feels they can get to the same ending with the Planning Board. They will take care of every concern but will continue to disagree there has been an expansion. BS stated his thought is to grant another 30 days if a Special Permit will be applied for. PG stated the Board should consider the reason the applicant is before them. JD questioned if they want the 30 days to go forward with a Development Plan or the time to develop their strategy? JT explained that either a Development Plan or a Special Permit could work. A Development Plan Review is non-discretionary but it can't be denied. If they come in with a plan the PB has to say yes even if they meet the bare minimum. If they come in for a Special Permit the Zoning Board has more discretion to deny if they so choose. There is a way to go forward but the applicant will have to make some serious commitments to adhere to certain items. JK stated they met 2 weeks ago and the Development Plan Review idea came from both parties not budging on their stance of an alteration to a preexisting nonconforming use. Both parties do agree there are issues that need to be met. GH stated they will put in writing what the Board is requiring as early as the next day or the board can vote tonight, sustain Tim's cease and desist and then we would go to court. Some Board Members still questioned as to why they wouldn't apply for a Special Permit. JT stated it's a possibility they can do the Development Plan with ZBA input. The board discussed if they allowed the 30 day continuation they would want an expansive list covering the majority of Special permit items that the Development Plan doesn't cover in writing before the next meeting. PG stated he said the odor is getting worse in that area. GH stated this is their peak period and there is no way to eliminate that.

BS motion to allow a continuance of the meeting. JK, TA and the petitioner will work together towards an acceptable Development Plan with footnotes or an application for a Special Permit with the ZBA.

BW second.

BS, BW, AP and JD in favor to allow continuation.

PG opposed

The applicant is granted a continuation to July 6, 2017 at 7:00 PM.

JK questioned if there would be a quorum due to the 4th of July holiday week. The members stated they would be attending.

Continuation – 47 South Maple Street – Maple Brook Condo. Trust

Appeal of the Development Plan decision by the Planning Board

Sitting In: BS, BW, AP, JD and PG

JK explained it was requested that he and TA go out and view the site. There is a memo attached (dated 4/18/17) and a plan. Attorney Levine passed out photos; images from Google-huge swaths showing there and stated that the parking plan was never followed.

JD disclosed that his wife had business with the law firm prior to the first Public Hearing. He did not have any business with them and his wife no longer has business with the firm.

JT stated that notes on a plan are not the same as conditions. If a board had wanted to impose specific conditions they would have. The applicant does need to clean it up. Attorney Joe Antonellis (JA) felt the notes indicated to him that the berm was to be planted with 7-8 foot white pines which were in place. JK stated there is a berm there with pines in accordance with the as-built provided and approx. 2 feet wide. JA stated the plan is not well documented and we need to use it for what it says and the one in front of them indicates it is already there. Attorney Levine stated that the pipes are bulk storage and felt that you cannot store piping in the buffer. That is a violation. JK and TA discussed the amount and the material they saw and determined pipe storage associated with a primary industrial use was not bulk storage. JA states that bulk storage on the property, even if in the buffer zone would be a violation of the Zoning Ordinance vs. violation of the plan. JT stated bulk storage: mulch piles, sand, gravel, NOT building material. If someone violates a Plan Review then TA can cite them. PG stated he agrees that pipe is there but it's not Bulk Storage. It does need to be out of the Buffer Zone. JD stated a Buffer Zone doesn't have to be de-vegetated. JT commented that no one can read the words that aren't there. Buffer Zone is used all over without stating vegetated or screened. It may be intended but it is not written there. JA stated that they were before the ZBA for an appeal and need to focus on the evidence and not innuendos. Robert Inguanti, Trustee of Condos stated that the area should not be piled up with materials, bulk or not. There are 97 unit owners and in summer there is noise and vibration they all have to put up with. He felt just because the town officials went out and didn't observe anything, they don't live there and they don't have to deal with it. He stated there are zoning infractions and the Development Plan should not be approved (see section F). JT stated that section F talks about what is on a plan and how you are evaluating it, not what is written on it. Abutters spoke of the impacts this business has on their day to day living. JA stated his client, Premier Equipment has agreed to all of the Planning Board's request to have the least impact on the neighbors. The board took into consideration all materials presented and all comments from the concerned parties.

AP to close the hearing
PG second.
All in favor to close the hearing.

AP motion uphold the decision of the Planning Board.
PG second.
BS, BW, AP and PG in favor
JD opposed
The applicants appeal is denied and the board is in favor of upholding the PB decision.

Continuation – Old Farm Road Map 0007/0011 – Brookstone Development, LLC

Variance to construct a storage facility with insufficient frontage
Sitting In: BS, BW, AP, JD and PG

JK explained that we contacted this applicant and he needed this continuance due to the fact he would be in Mexico. (reading from the request). He has asked for quite a few continuances. The abutters have come to each meeting and haven't heard anything yet.

BS stated if we allow a continuance then he should have to re-notice the abutters at his own expense and provide proof of this.

BS motion to allow a continuance with re-notices of hearing and proof of the mailing.
AP second.
All in favor to allow the applicant continue to July 6th as stated above.

Continuance – 799-801 Pulaski Blvd. – John Wasylean, Jr.

Special Permit for Earth Removal
Sitting In: BS, BW, AP, JD and PG

JK explained that this applicant is still before the Planning Board.
BS motion to allow a continuation to July, 2017.
AP second.
All in favor to continue as requested.

Other Business:

Board Re-Organization

AP motion to appoint Brian Wright as new Chairman to be effective July 6, 2017.
PG second.
All in favor to appoint Brian Wright as Chairman beginning July 6, 2017.

Minutes – May 4, 2017

AP motion to accept the minutes as presented.
PG second.
All in favor to accept the minutes.

Meeting Adjourned 9:45 PM

Approved 7/6/2017

Approved ____/____/____