

Town of Bellingham MA

10 Mechanic Street, Bellingham MA 02019

Zoning Board Meeting Minutes 01/10/2018

Minutes of Meeting
January 10, 2018

Present

Brian Wright (BW), Chairman
Brian T. Salisbury (BTS), Member
Arturo Paturzo (AP), Member
Peter Gabrielle (PG), Member
Joseph Flanagan (JF), Alternate Member

Absent

James Jeskche (JJ), Alternate Member
James Dunlea (JD), Member

Other Attendees:

James S. Kupfer (JK) – Town Planner & Zoning Compliance Officer
Barbara J. Saint Andre (BST) – Town Counsel
Timothy Aicardi (TA) – Building Commissioner

BW opened the meeting.

JK stated he would like to change the order of the hearings.

New – 43 Bertine Street – David Nichols
Special Permit and Variance to further non-conform lot
Sitting in: BW, BTS, AP and PG

JK review the Boards' package. He explained this pertains to two lots but only one, 43 Bertine Street would be further non-conformed and therefore is the applicant. Historically the Board requires a variance for this relief request however after JK had discussed the matter with new Town Counsel, she recommended a Special Permit, if the board agreed. The applicant applied for both and one will be withdrawn.

Rick Goodrow (RG) of United Consultants explained that they have a plan of land and they are looking to take the triangular parcel and convey it to the direct abutter. It is a land swap between two neighbors with pre-existing non-conforming single family parcels of land. There are no new buildings being proposed. They are both zoned agricultural. Lot 1 would like to convey 1401 square feet to Lot 2. It would be approximately 15,000 square feet of lot area and 8,000 square feet of lot area after the swap. BW asked the difference between a special permit and the variance request as he applied for both. BST explained the difference between the requirements of special permit versus a variance. BST stated that the key difference is to examine the plan to confirm if no new violation is being created. If not, then a special permit can be considered. Then the Board shall determine if the proposal is not more detrimental to the neighborhood. AP stated a special permit is less stringent. RG from United Consultant stated that each is less than the 80,000 square foot required and each has less frontage than allowed but the setbacks will not be changing. The lot areas are the only changes that will take place. BW stated first the board needs to determine if the applicant needs a variance or a special permit. There were no attendees from the public therefore no questions were asked by the public. BW stated it does match the other lots in the area. David Nichols continued to say that Diane Kettell, the other applicant is in agreement and no neighbors have challenged the proposal. JK stated the board should ask the applicant to withdraw the variance or the special permit. David Nichols requested to withdraw the variance part of the application.

AP motion to accept.

PG second.

No discussion

All in favor to accept the withdrawal of the variance.

JK stated the applicants will have to come before the Planning Board for an ANR plan.

AP motion to close the hearing.

PG second.

All in favor to close the hearing.

BTS motion to grant the special permit as requested.

AP second.

All in favor to grant a special permit to further non-conform the lot area at 43 Bertine Street.

There is a 20-day appeal period.

Continuation – 174 Maple Street – LMP Properties, LLC

Appeal of an order by the Building Inspector

Sitting In: BTS, JJ, AP, ~~JD~~ and PG and JF

JK explained that BW, the Board Chairman was not on the Board at the time this hearing began and JD, our Vice Chairman is not in attendance this evening, therefore the Board agreed that PG would stand in as Chairman for this evening's hearing continuation. JK stated that PG would be standing in as Chairman and as such must appoint the alternate JF, who has been in attendance for each meeting, as a voting member for the balance of the hearing. JK stated a letter was received from the applicant's attorney that they were not going to be in attendance. JK went on to read the letter from the applicants' attorney. JK reviewed each of the facts that have discussed during the hearing to date.

Additionally JK explained each of the findings that have been discussed with the applicant and presented to the Board by Staff. The applicant was cited by the Building Inspector for violations of the zoning bylaws regarding storm water, odor and noise. JK once again explained that there was a zoning bylaw in place in 1989 at the latest and in the 90's is when the previous owner procured the property. At that time ortho mapping clearly showed a forested site, no mulch .

The property has no permits in place for the use that exists today. JK recapped again the differences between 2011 versus 2017. PG asked what parts of the street addresses are included. JK stated that 174 Maple Street was cited as it is the main office for the operations. Both sides of Maple Street are included. PG stated on the west bound side the piles are relatively new mulch piles and are nearing the public street and more than 4 stories in height.

BTS asked why the lot was cleared in the first place. JK explained a motor cross permit was issued at one time at the property but it was never constructed. The property was just cleared. The Conservation Commission was also involved at that time too but with the motor cross plan only. That plan shows it went to the town owned parcel line and a small area was a wetland. The mulch goes right up to that line now.

BTS stated the first thing the Board needs to finalize the board's findings since 2011. BTS asked JK to review the evidence and discussions concerning the current conditions of the site. JK stated that in 2011 at 169 Maple Street there was moderate storage of mulch, approximately 50% less. The ortho mapping, the residents and driving by have shown much more than that now. They have police reports, letters from the Board of Health, Fire Department and can see from the mapping dump trucks, loaders, etc. There was also a stipulation made by the town when RJ Cobb was taken to court to put up safety fencing which was not there at the time. JK stated that based on their own testimony the machines and equipment travel from one side of Maple Street to the other often.

One item noted throughout the hearing is the clearing on 174 Maple Street in the rear of the property. The only access to the rear of the site is through 174 Maple Street. There is a minor clearing shown there in 2011 and since then has been vastly expanded.

Additionally, JK noted that the complaints from the Board of Health and police records describe concerns from residents who lived at 161, 164, 166 and 169 Maple Street which were single family homes.

PG stated it went from a permit for a motor cross facility to a storage facility and they never applied for a permit. JK replied that PG statement is correct; no permits were issued for the current use.

BTS asked JK to further recap the current conditions of the site. JK stated that currently they are maximizing the site as much as possible. This can be seen through aerial imagery and simply driving to the site. Both will show that 80% or more of the site at 169 Maple Street is currently being used for mulch storage and loading for distribution. JK explained he went with the Deputy Fire Chief in 2016 to conduct a site walk; the height was at its maximum. The 20 foot fire lanes are not being met at the time. BTS stated they are constantly processing mulch. TA stated they are processing logs. PG asked if that is considered manufacturing if they are processing material. JK stated they have no permits for manufacturing. BTS asked about storage of chemicals. JK stated that 169 Maple Street is a direct abutter with Conservation Land with direct sheet flow runoff to the Town property and is one of the violations that the Building Inspector cited in his cease and desist.

JK stated that 174 Maple Street has storage for mulch and logs and they also process. The property owner continues to add logs into the extra cleared area along the gravel road on 174 Maples Street that brings you to the cleared area in Franklin. All the former single family homes directly abutting the property are now owned by LMP Properties. BTS recalled the owner coming before the board asking us to help him out as his tenant was constantly feeling vibration. The home is next door to the mulch piles. The owner was at a loss as what to do and then he sold it to LMP. The tenant constantly complained and the owner didn't really have a choice. BS stated he personally observed the increase, the equipment crossing over Maple Street, an increase in the mulch piles and the noise. BTS stated the activity never stops. PG stated right after the snow storm the lot was cleared. AP questioned their statement as to "not as much activity" after the fall, which apparently is not true. BTS stated there was a road constructed at 174 Maple Street. That was not always there. They created mounds and store massive amounts of logs. The members also stated there was an odor carried whichever way the wind was blowing which has increase through the years.

JK stated that the Board of Health produced files showing DEP complaints from as far as the Franklin area neighborhoods. A resident had an odor complaint a few years back, his wife had asthma and she had to go to ER when the odor increased. The Board agreed that there is a clear expansion of the site over the last 6 years and as a result there has been a large impact from 2011 to present in regards to odor, noise which has directly impacted its neighbors. The degree of use and impact to the neighborhood has increased from 2011 to 2018.

BTS agreed and added the processing has also increased. BTS stated that safety is a big issue, too as the road there is winding. AP stated the Board did try working with them for almost a year. They refused to comply with the required Special Permit. The Board agreed there was a substantial extension of use and in turn an increase of traffic, noise, impaired water runoff, and odor.

AP motion to close the hearing.

BTS second.

All in favor to close the hearing.

AP motion accept the facts and findings summarized tonight.

BTS second to adopt the summary offered tonight.

All in favor.

PG motion there is a substantial extension of a preexisting non-conforming use and due to the extension has violated the zoning bylaws regarding noise, odor and stormwater.

BTS second.

No discussion.

All in favor.

PG motion to uphold the Building Inspector's decision and to deny the appeal.

BTS second.

No discussion.

All in favor.

AP motion to allow the acting Chairman to review and sign the decision for the Board.

BTS second.

All in favor.

General Business:

Minutes – December 7, 2017 –On Hold

Annual Report

The board asked JK to add the informal discussions that took place in 2017.

JK agreed he could do that.

Meeting Adjourned.

Approved 2/1/2018