City of Westfield

ZONING BOARD OF APPEALS

Martin Newman, Chair
Richard Sullivan III, Member
Gary Bacchiocchi, Member
Sofia Williams, Alternate

April 13, 2016

The meeting was called to order by Chairman Newman @ 7:00 p.m. Room 315, Municipal Building, 59 Court Street, Westfield, MA.

☑ Members present
☐ Members absent

☑ Martin Newman, Chair
☑ Richard Sullivan III, Member
☑ Gary Bacchiocchi, Member
☑ Sofia Williams, Alternate

Staff

☑ Jay Vinskey, Principal Planner
☑ Christine Fedora, Clerk

1. *Call to order*: Chairman Newman called the meeting of the Zoning Board of Appeals to order at 7:00 P.M. in Room 315, Municipal Building, 59 Court Street. Westfield MA. Members introduced themselves.

2. Public Participation: Chairman Newman asked if there as anyone in the room who would like to address the Board regarding an item not on the agenda.

Robin Sheldon addressed the Board regarding a possible filing for Jean Valentine for a lot on Roosevelt Avenue. He has looked at the in-fill ordinance and feels this lot would meet the requirements for the infill ordinance; he did however state there is one factor he has questions regarding. He noted the applicant also owns the house next door and when they average the lots together it falls underneath the requirement.

Members inquired as to how off this would be? Mr. Sheldon informed the Board it's off by 2 inches. Chairman Newman informed him he couldn't give him a definitive answer either way noting the Board would have to review the application adding it's very unpredictable. He felt it is close and that it might be given strong consideration.

Chairman Newman read the notice for Carlos & Maria Quiles which was a (reopening of hearing closed on January 27) He noted he was not at the original hearing where it was closed. He proceeded to ask if there was new material to be presented this evening and if so is there someone here to present the proposal?

Rob Levesque of R. Levesque Associates introduced himself to the room noting there is nothing new to present he is coming in late to the game. The original application was submitted by Attorney Mark Beglane. Levesque noted the hardship presented to the Board at the last meeting related to the applicants' personal hardship noting that should not have been given to the Board. He then proceeded to mention case noted Crosby vs. Board of Appeals. THOMAS E. CROSBY & others vs. BOARD OF APPEALS OF WESTON & others.

APPROVED

The plaintiffs appeal from a decree upholding the decision of the Board of Appeals of Weston (board) granting a variance to the owners of the locus, the other defendants in this suit (defendant). The record (including "Findings, Rulings and Order" and a "Statement of Agreed Facts") furnishes an adequate basis for the decree. The evidence is not reported, and the trial judge took a view. Both the board and the trial judge found, in sufficient detail, that all the statutory requisites (G. L. c. 40A, Section 15) for the grant of a variance had been met with respect to the locus. The trial judge made full and careful findings (including among others) that "[t]he locus meets the requirements of the Zoning By-law in square foot area and frontage, but not lot width at setback and building lines, [and] [t]he terrain and contour is such that construction on the locus requires locating the dwelling in a position as not to comply with the sideline requirements," that "[t]he locus . . . is the only lot remaining in a subdivision without a dwelling thereon," and that "[a] literal enforcement of the Zoning By-law will probably result in complete non-use of the parcel." He then explained there are 2 requests being made, one in relation to the area because of the aquifer and the second is the frontage. He felt the practical point of view is there is a single family home there already and he believes the intent was to protect well head, adding the property wouldn't contribute to nitrogen because sewer available, the Stormwater doesn't add to water, creating new conforming lot other than one requirement which is the square has to fit in the lot.

Further discussion regarding the 2 acre requirement in the aquifer zone. Levesque proceeded to show the area to the members indicating the lot sizes of this lot as compared to the other lots in the area that are also located in the overlay district adding he felt this size lot would be unique in this area, noting the Stormwater wouldn't affect anything, any concerns regarding the aquifer protection could be dealt with in adding conditions to the variance.

Member Bacchiocchi voiced his concerns regarding this being such a large variance where it is 1.35 acres versus 2 and frontage. He felt this is a steep hurdle and he wasn't sure if the hardship requirement issue was addressed. Levesque replied he knows there have been variances granted and hardships are always in question, he noted he didn't have a bullet for that answer, noting he doesn't have a good argument the only thing he mentioned was the changes in the zoning, noting there has been case law changes. Newman a change in the zoning does not justify a hardship.

Alternate Williams asked if this was a dirt road. Abutters? Yes.

In favor?

Levesque proceeded to hand in letters of support from 3 abutters.

Chairman Newman informed the room that if someone attended the previous hearing and has something additional to add this would be their opportunity to speak?

Linore 266 shaker
No objection.

In favor?

Opposed? One citizen affirmed his previous testimony against this, but added no new information.

Chairman Newman noted that if anyone wants to add anything to the record they could do that now.

APPROVED

Alternate Williams asked if the concerns regarding the drainage and runoff have been resolved?

Carlos Quiles addressed the Board indicating has put a barrier which is still in existence and that there are no problems.

Daniel Lessee
He lives opposite the applicant, the barrier is lying down and there is still an erosion problem. Discussion between the applicant and Mr. Lessee occurred.

Alternate Williams asked Mr. Levesque they could foresee any problems with house there? Levesque replied there can always be a problem with change, sounds like having issue on the side, something new can always be of concern, he noted there are some precautions that can be taken such as a requiring silk fence, hay bales or barrier noting it's in the upland area not near the wetland probably wouldn't require that. Stormwater controls make a lot of sense. Alternate Williams noted the main concern was erosion and that a condition could be added to rectify that.

Member Bacchiocchi inquired if they considered subdividing and putting an addition to the home? Mr. Quiles replied they have done some remodeling already noting it would not take care of the problem regarding his hardship.

Vinskey informed the members of another application where there was a restriction put on some of the back property. Member Sullivan MOTIONED, seconded by Bacchiocchi to close. All in Favor.

Vinskey noted the Board had granted the requested extension until May 6, 2016.

Chairman Newman read the notice into the record for: 34 Ward into the record.
DIANE DEMORRIS who seeks a dimensional special permit per Section 3-40.4(13) to allow for a side property line setback of less than 20 feet for construction of an attached garage. Subject property is 34 Ward Road and zoned Residence A.

Chairman Newman asked if there was anyone in favor of this project?

Diane Demorris the application addressed the Board. She is looking to add on a garage and she needs an additional 10 feet. Members asked if she had the land surveyed? She indicated the builder looked at it. Chairman Newman noted on the right side there are other properties with garages closer, he also suggested the applicant verify the amount they are looking for. Alternate Williams asked they put a stake where going to be located.

Room in favor?

Opposed?

Chairman Newman asked the applicant to stake off the area noting the Board would not be voting tonight. The Board briefly discussed the next meeting and noted that April 27th would work for members. Member Sullivan MOTIONED, seconded by Bacchiocchi to continue to April 27. All in favor.

APPROVED

Chairman Newman read the notice into the record for:
HAMPTON PONDS REALTY who seeks an amendment to conditions of a variance (voted 4/1/15) granting relief from Sections 3-50.5(1) and 3-170.5(4) for lot area, frontage/width, and Section 4-20.1, lot reduction prohibition, to allow for a division of a lot into two. Subject property is 105 Long Pond Road, also known as 12 New Broadway, and is zoned Residence A and Water Resources.

Members inquired if this was going to be the same number of lots? Mr. Weiss informed the Board it would be for the same number of lots, adding the subdivision is not changing at all he is downgrading for the exchange.

Member Bacchiocchi noted he was initially confused about this application adding the Board granted 2 variances which were very similar, one has been amended already and now you're looking to amend the second variance? Mr. Weiss explained the one buyer who wanted to buy the property is off the table now. He indicated he wants to offer a different exchange, the change would be a downgrading, merge 21 New Broadway with previously merged property that didn't get merged, and 21 subsequent merger they did not proceed not going to merge 21 with anything, need to provide different exchange 8 or 18 downgraded 18 and 20 merged.

Exchange 95 New Broadway allowed either 8 to be downgraded or 18 and 20 merged. Recorded 95 New Broadway , still have option, don't have to commit until seeking building permit, it will be one of those 2 don't know which one will be.

Chairman Newman also voiced concerns regarding these applications, he felt the Board is getting into unchartered territories with these variances adding the Board has been flexible but he felt it might be getting convoluted, the applications are being based on each sale and whether or not they go through, he felt these are getting hard to keep track of, variances are extraordinary, he added he wasn't sure how the other members felt. Alternate Williams asked if he has signed agreements? Not for this one. Chairman Newman reiterated the act that he's never seen anything like this before. Mr. Weiss added he's done a lot of work and he's getting towards the end of cleaning up the area. Chairman Newman stated the Board would not be voting tonight but noted he would like a diagram or flow chart so people can figure out where and when things occurred. Bacchiocchi added he was confused but if you think conceptually, it's not bad.
.
Alternate Williams asked why now? New development. Mr. Weiss informed her in April the variance expires and he has also submitted an extension request.

In favor?

Opposed?

Margaret Dantillo ~ 76 Long Pond Road

Stated she is not familiar with variances, but she is familiar with property across the street. Live there like to see nice homes. She voiced her concerns there are areas where there is no maintenance on the property. She asked the Board to suspend extending the addendum without looking at whole picture, not sure what trying to do take pieces together, are they taking it down? Chairman Newman noted if there is an issue with derogate property it should be taken up with the building inspector.

APPROVED

Further discussion among members as to if the lots are downgraded the structures that are on the lots should be demolished.

Terry Campbell ~ 76 Long Pond
Wasn't aware of the meeting and didn't get the notice.

Member Bacchiocchi MOTIONED, seconded by Sullivan to continue to April 27th. All in Favor. Chairman Newman noted the Board would like a time line and some type of summarization to review.

Chairman Newman read the notice into the record for:

KG INVESTMENTS 649 LLC who seek variance relief from Sections 3-40.5 and 4-20.1 to allow for division of a lot in two, each to contain an existing dwelling but having less than the required frontage/width, area and layout. Subject property is 649 Montgomery Road and zoned Rural Residential.

Representing the petitioner was Mark Reed. Mr. Reed proceeded to give some history of the home. The house was built in 1817, in 1989 there was a one bedroom dwelling added towards the rear of the property. He noted the assessors list the rear dwelling as one bedroom dwelling and the front parcel of land, 275 feet frontage, when the back 2 dwelling built the frontage requirement was 125 feet frontage if it was subdivided at that time it would have had enough frontage for both lots, but the new zoning requires 150 feet frontage for each dwelling and in 1988 there was an amendment that one dwelling per lot was allowed, this case 2 existing nonconforming lots. The proposal before the Board is to create conforming lot house in 1817 to have 150 feet frontage and appropriate area and second lot dwelling towards rear have 125 feet frontage but not have required lot area of 65,000 s.f.

Assessor's office list as 2.5 acres, he noted the deed indicates there is 3 acres of land. If the application is successful in obtaining the variance they will do a survey and may lend itself to indicate 3 acres which would allow both lots of 60,000 s.f,. If the assessors is right the second lot would have less than that. Chairman Newman asked if the second house in 1989 was permitted and built to the plans? Current owners didn't own property at that time, believe was permitted has septic system, do share well, electric services. Chairman Newman asked if they plan to separate? Mr. Reed indicated his clients want to convey rear to son and retain the dwelling in front for their own use. If successful will put in new electrical services and split. Chairman Newman asked if the assessors record show 2 dwellings? Yes. Mr. Reid indicated there are 2 separate property cards adding he didn't think there would be enough frontage. Chairman Newman added the variance would have to be specific. Reid added that is why they are requesting 125 feet for second lot. 2.5 acres would be 1.2 acres roughly difference probably 40 – 50,000 s.f. in size. Vinskey noted you can't count the wetland area in the minimum lot size. Chairman Newman added 2 houses on one lot adding the issue don't know how to handle if don't know how much land have and might need wetland determination, need to know what's on there. Vinskey added they could condition. Chairman Newman added the houses are there 2 houses on one lot. Mr. Reed noted the house in the rear has a driveway, 2 separate driveways. Chairman Newman also felt there should be a determination as to the wetlands.

In favor?

Opposed?

Ben Bednarz

APPROVED

Previous owner of the property. In 1989 requested permit to build a barn, he built the barn and used it for 10 years and sold the home, he added he doesn't see any reason how it can be called a dwelling? A barn is a barn. Mr. Bednarz noted page 3 of the application.

Chairman Newman asked if he lived there? Across street.

There was a permit for the barn, no permit residence into residence. Mr. Reed indicated the permit for septic is associated with the house, 2006 and finished in 2007. There were no permits for the dwelling, they are from the Boston area and are using the barn as rental property.

Karen George
643 Montgomery Road
Voiced her frustration about the fact she moved in in 1988 and there was no barn, now there is a barn and she can see it from her house. In 2000 started to see lights on in the back, she was told they could never put apartment house in there. She proceeded to voice her concerns regarding the fact what she was told what couldn't happen and in fact what she was told couldn't happen has happened. She also voiced her concerns regarding the Assessor's office coming out and looking at the property and in 2004 it was assessed as a dwelling. Takes away from her privacy, they have evaded the laws. Also voiced concerns regarding wetlands.

Sharlin Puza
Prepared letter (opposition) read.

The following were opposed.

William & Susan Guertin ~ 669 Montgomery Road
Dave Crowl ~ 665 Montgomery Road
Susan ~ 658 Montgomery Road
Valarie Rainey ~ 635 Montgomery road
Richard George ~643 Montgomery road
Property values, behind other houses, impact property values.
Showed photos wetland, stream.

The owners spoke saying they are not attempting to influence, they are trying to put things in a trust for their Son.
.
Member Williams said she would like to see something showing the wetlands, the side distances, permit records that would support their case.

Sullivan MOTIONED, seconded by Williams to continue to April 27. AIF

Chairman Newman noted if there are new items received they can be heard at the next meeting.

HEKA Health
Chairman Newman read the notice into the record for:

APPROVED

HEKA HEALTH, INC. who seeks variance relief from Section 3-130.6(2),(3) for a front and side yard setback of less than 20 and 15 feet, respectively, to allow for the enclosure of an existing canopy structure for use as a marijuana dispensary. Subject property is 98 Sgt. T.M. Dion Way and is zoned Industrial A.

Vinskey informed the Board the applicant has received the Planning Board's approval but it does not meet the front and side yard setbacks for the enclosures. Tom Keenan indicated could not find any city records permitting the canopy. Vinskey showed aerial photos of the site, showing the subject canopy appear around 2001, permit or not it violates the front yard setback because it did not pre-exist zoning. Keenean submitted revised plan showing setback was in compliance (differing from original site plan to Planning Board)

Questions?

Additions?

Chairman Newman asked what the alternative would be? The alternative would be to tear it down. Jay noted it is probably protected as it has been there over 10 years, but converting to an enclosed space would intensify the use and nonconformity.

In favor?

Opposed?

Motion close? Member Bacchiocchi MOTIONED to close. All in favor.

Todd Lamountain
Chairman Newman read the notice into the record for:
TODD LAMOUNTAIN who seeks a Section 3-50.4(5) dimensional special permit and/or variance relief from Section 3-50.5 for street line and side yard setbacks of less than 15 feet and/or from Section 4-30.1(a) for building separation of less than 10 feet to allow for construction of a detached garage. Subject property is 69 Prospect St. and is zoned Residence A.

In favor?
Ted Lamountain addressed the Board informing them he would like to construct a detached garage. He proceeded to show the location to the Board members. Chairman Newman inquired as to the measurement of the closest garage to the street side? He indicated it is 2 feet from the city's property line. Chairman Newman informed him he needs to get the dimensions down, and to stake out where the garage is located so the Board can see where he would like the structure. Alternate Williams noted concerns about the height of the garage and the distance. The Board asked the petitioners to stake the property and to put on paper what they are seeking.

In favor?

Opposed?

Alternate Williams MOTIONED, seconded by Member Sullivan to continue to the next meeting, April 27. All in favor.

APPROVED

Chairman Newman noted the public participation portion of the meeting is over this is for discussion for the members only, no public input.

Carlos & Maria Quiles ~ Shaker Road
Member Bacchiocchi began the discussion he said he is sympathetic to the request of this application and situation but he noted he had a problem with the hardship aspect, noting he was curious as to what the other members felt, he also noted that Mr. Levesque didn't have a good answer for the hardship issue.

Member Sullivan felt that Levesque addressed some of his concerns, noting it was nice to see how big the aquifer is, he thought it was good knowing the storm water runoff and the nitrogen wouldn't affect the aquifer, he felt the square box issue is unique to Westfield it doesn't seem to make a difference one way or another, nice to have input from neighbors, nice to know some are in favor. The area has been developed from what it used to be, he didn't think it would be a detriment, not an eye sore. He felt as far as the hardship goes a compelling reason would be to look at the topographical analysis. The zoning was changed; he felt no one has the right to be last one in the neighborhood, no right to that. He felt the change in zoning can seen as hardship.

Alternate Williams concern was the run off she felt that Mr. Levesque addressed that point. She felt it could be conditioned in the variance as far as what needs to be done to maintain the runoff. She felt the house is beautiful in that area, driving by it would not be a detriment area. She explained her feelings toward the hardship. She felt it would be a hardship if the Board doesn't let them do this she feels it's compatible to the rest of the lots in the area, they have done a great job with what's there. Her concerns were from the photos she saw at the first hearing, she felt as along as measures are taken and conditions added they should continue, if there is a problem a neighbor would come forward.

Chairman Newman noted hardship doesn't have anything to do with personnel situation, it has to be the land. A hardship would be caused by the passage of a wetland rather than land itself, no hardship if they are not being able to divide, that is not hardship. Zoning change is not a hardship, nonconforming neighbors may not be not a hardship. He noted he understood the arguments, in other zoning districts there are infill rules that might allow this, a lot of smaller lots, here, understand argument other houses same, can't divide to 2 lots, off by 30 to 35%. He felt there are compelling interests on both sides, noting the Board hasn't gone that far off of the ordinance. He noted he is worried about the integrity of zoning ordinance, already have a lot of houses there, don't see as detrimental to neighborhood, fact on sewer, from a non-legal point of view in his personal opinion it should be approved, but he felt this would be deviating from standards of zoning ordinance, he felt there are risks that are being taken and the Board should be mindful of that, have dealt with large deviations from ordinance before, but can't just grant for convenience and without legal ground.

Member Bacchiocchi asked if there have been repercussions in the previously? Marty haven't stretched too much in past. Alternate Williams suggested possibly making one lot to 150 to make one of the lots conforming or to make them both at 125?

Chairman Newman looked at the rest of the neighbors have lots. Alternate Williams felt they have tried everything else, short of having built somewhere else. Alternate Williams mentioned the 125 and 125 frontage. Member Bacchiocchi felt it's the same thing the area is not conforming.

Chairman Newman felt it needs to be worked towards more conforming.

APPROVED

Alternate Williams noted the 125 and 125 as well as maintaining the storm run water run off as suggestsed by Levesque might be something to consider.
Jay requirement about recharging ground water triggered over15% impervious. Member Sullivan noted the vegetation in back.

Vinskey suggested the Board may want to wait 2 weeks to draft some conditions more carefully. Sullivan MOTIONED, to table until April 27th. AIF

Heka

Alternate Williams felt the building is already there and it would be beneficial to close off. Sullivan also noted there is nothing around there , no impact on the neighborhood, nicer building back there, tax dollars city, the problem already exists we would be allowing it to be enclosed. The hardship is it's in existence, have to take down.

Chairman Newman felt it would be a hardship if had to be removed, it's in an Industrial business area. remote area, dead end it abuts city land.

The Board felt this street is really absorbed into the site. The closing in of the canopy has no detrimental effect, the hardship would be if they had to remove this structure or not be able to enclose it.

Sullivan MOTIONED, seconded by Bacchiocchi to approve 98 Sgt. Dion way. Straight approval, everything already there. Condition? No further expansion of existing building into setback.

The Board felt, per plans, no relief was necessary for the side yard reduction as there was enough land to conform to the ordinance.

Minutes? Member Bacchiocchi MOTIONED, seconded by Williams to approve. All in favor.

Other business.

April 27, 2016 next meeting.

Motion to adjourn at 9:37. AIF

APPROVED