



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1009 Main Street
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher
Associate Members:
Jaime Doherty
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES January 28, 2016

The meeting was called to order by Rob Dugan, Chairman, at 6:30 p.m. at the Town Hall. Present at the meeting were Len Dunn, Dianne Bartalamia, and Melissa Johnson, Recording Secretary.

Gerald Kutcher and Jaime Doherty were not in attendance.

Approval of Meeting Minutes – December 17, 2015

MOTION: Mr. Dunn made the motion to approve the December 17, 2015 meeting minutes; seconded by Ms. Bartalamia and the motion carried 3-0.

CONTINUED HEARINGS

GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC dba Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05 (11) that the affordability “lock in period” set forth in the Comprehensive Permit issued by the Board on Mary 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor’s Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.

Mr. Dugan noted that the Board is in receipt of correspondence from Attorney Ted Regnante requesting to continue this matter to February 25, 2016.

MOTION: Mr. Dunn made the motion to continue GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC dba Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05 (11) that the affordability “lock in period” set forth in the Comprehensive Permit issued by the Board on Mary 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at 11 Old Boston Road, Assessor’s Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts, to February 25, 2016 at 6:30 p.m.; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA

FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, c/o Paula Barry) for a variance from Section 4130, Appendix B, of the Tewksbury Zoning Bylaw. The applicant proposes to construct a new single family residence as shown on plans filed with this Board. Said property is located at **20 Riverview Avenue**, Assessor's Map 98, Lot 21, zoned Residential.

Present was Attorney Richard O'Neill, on behalf of the applicant, and Jim Hanley from Civil Design Consultants.

Attorney O'Neill provided the members with a "Revised Written Statement (January 28, 2016)" and explained they requested a continuance at the previous hearing to allow time for them to amend the application to change the location of the structure. Attorney O'Neill explained that the applicant will not be going forward with the request for a variance from Section 4130, Appendix B, but rather is seeking to obtain a Special Permit as well as a Section 6 finding with respect to the provisions of Section 3600, Paragraphs 3651 and 3670 of the Tewksbury Zoning Bylaws. Attorney O'Neill requested to table the hearing on the Section 4130 variance request until after the decision on the Special Permit request.

MOTION: Mr. Dunn made the motion to table FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, c/o Paula Barry) for a variance from Section 4130, Appendix B, of the Tewksbury Zoning Bylaw. The applicant proposes to construct a new single family residence as shown on plans filed with this Board. Said property is located at 20 Riverview Avenue, Assessor's Map 98, Lot 21, zoned Residential until after a decision is issued on the Special Permit request; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA

NEW HEARINGS

FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, C/O Paula Barry) for a variance from Section 3600, Paragraph 3640 and Special Permit under Section 3600, Paragraph 3651 and 3670 of the Tewksbury Zoning Bylaw. The applicant proposes to construct a single family residence within the front yard as show on plans filed with this Board. Said property is located at **20 Riverview Avenue**, Assessor's Map 98, Lot 121, zoned Residential.

Present was Attorney Richard O'Neill, on behalf of the applicant, and Jim Hanley from Civil Design Consultants.

Attorney O'Neill noted that they are not seeking a variance from Section 3600, Paragraph 3640 and are only seeking the Special Permit under Section 3600, Paragraph 3651 and 3670. Attorney O'Neill requested the variance request be struck.

Mr. Dunn asked if the “Revised Written Statement” provided is different from the previous and Attorney O’Neill explained that the variance language has been removed.

Attorney O’Neill explained that the essence of the proposed changes is addressed in Section 3600 “Nonconforming Uses and Structures” and noted that this is a nonconforming structure with a conforming use. Attorney O’Neill explained that in 2000 & 2002, when this bylaw was recodified, this section was new and was intended to reflect State statute, Section 6 of Chapter 40A, relative to how communities should treat nonconforming uses and structure situations. Section 3651 addresses preexisting nonconforming single and two family residential structures. Attorney O’Neill explained that these are situations where the State and Town created language that said that if you fit into one of the categories then you are required to go to the Building Commissioner to obtain a building permit. Attorney O’Neill explained that because they are slightly larger than a half acre, they do not fit the standard of 10,000 square foot or 15,000 square feet. As a result, they need to seek individual relief relative to the Special Permit. Attorney O’Neill read Section 3651 aloud and explained that the Board would need to make a determination that this is not more detrimental than the existing nonconforming structure to the neighborhood. Attorney O’Neill explained that should the Board render this request, then they would need to vote in the affirmative that it is not more detrimental than the existing nonconforming use and then vote in favor of the reconstruction.

Attorney O’Neill reviewed Section 3670; which is reconstruction after catastrophe or demolition, and noted that they are not a catastrophe; however, they are a demolition.

Discussion took place on undersized lots (lots less than one acre) in South Tewksbury. Attorney O’Neill provided the members with a copy of a tax map and extracts from the plan of land created in 1923 creating the individual lots. Attorney O’Neill noted that this is the plan referenced in the deeds as the lots are conveyed out and they have not been held in common ownership since the time of their creation. In 1956, the town went from 10,000 square foot lots to 1 acre lots and this has not changed since that time.

Attorney O’Neill explained that they are in the area of being a grandfathered lot and are entitled to proceed under the provisions of this section. As a result, a Special Permit is required and the Board needs to determine it is no more detrimental than the existing nonconforming use.

Attorney O’Neill requested Mr. Hanley provide a brief update on the changes to the project.

Mr. Dunn noted that the applicant was required to go before the Planning Board to prove that the changes were substantial and some of the topics discussed at that hearing were DEP, the original variance application, etc. Attorney O’Neill explained that there was no discussion on how they would proceed and there was only discussion on the changes that they would be making. The Planning Board granted the authority to move forward.

Ms. Bartalamia requested the specific changes that warranted that applicant to come back before the Board be reviewed.

Mr. Hanley explained that he has been involved with the project for approximately 18 months and that, originally, they filed a similar, but different, plan with the Board in November, 2014 for a variance application specific to the front yard setback. The Board denied this request in December, 2014. At that time there was also an alternate plan that was possible and would put the building within the building envelope. Mr. Hanley explained that in January, 2015, the applicant filed with the local Conservation Commission and presented a plan that they felt met the standards of the Wetland Protection Act. In March 25, 2015, an Order of Conditions was issued that should have expired on April 9, 2015 per the 10 day appeal period. At that time they had all the necessary paperwork in place and the applicant began construction on the site later in April, 2015. On May 13, 2015, the applicant received a DEP notice of Appeal, approximately 45 days after the appeal period should have expired. Mr. Hanley noted that DEP has claimed they never received the notice and the next step was to address the DEP appeal. Mr. Hanley explained that the flood plain elevation was one of the items that were appealed as there was an approved and accepted flood elevation of 85 on the site and there was a preliminary map that was issued that set it at 75. Mr. Hanley explained that they went with the elevation of 85 as that was the approved plan and noted that he is confident that the plan met the standard. In October, 2015 DEP denied their request for a superseding order. In November, 2015 a pretrial conference took place to see if there was any potential to negotiate a settlement prior to the adjudicatory process. Mr. Hanley noted that the plan being presented tonight is the direct recommendation of DEP and is completely located beyond or above the higher flood plain of 87.

Mr. Hanley explained that they have gone to the local Conservation Commission who have supported the new application and feel it is a better use of the lot and has significantly less impact on the resource area. In addition they met with the Planning Board who has also provided their consent as they recognized the modifications that were made to address some of the comments received. They also met with DPW on two separate occasions to ensure the location of the driveway will not impact their maintenance of either Bridge Street or Riverview Avenue. Mr. Hanley noted that he feels this is the best plan for all of the parties involved.

Attorney O'Neill explained that with respect to the Conservation Commission, the petitioner or applicant, does not have the responsibility to notify DEP of the action taken by the local board and it is the local Board's responsibility to do that and somewhere something went south. Mr. O'Neill noted that he is unsure exactly of what happened.

Mr. Hanley reviewed the modifications to the plan from 2014 to now which include: the front yard setback of the existing residence is slightly over 2.1 feet off the front property line associated with Riverview Avenue (in 2014 this was 6.5 feet off), and since they have changed this to 9 feet. Mr. Hanley noted that it is important to appreciate the difference from property line and street line; off of the distance to the street the plan in 2014 had 12 feet and they now have almost 15 feet with 14.6 feet. Mr. Hanley noted that this is why they took the time to meet with DPW on this. The size of building has also been significantly reduced; was previously at 28x42 and this has been cut down to 26x36; which is an approximate 20% decrease. Mr. Hanley noted that it is also important to note that they are only seeking relief for the front yard on Riverview Avenue and that the two side yards comply. Mr. Hanley also noted that the existing dwelling on the abutting lot at 95 Bridge Street is approximately 8 feet from the property line and they will be 16 feet. A privacy fence has also been added along the property line and they have also agreed to trim some of brush so that there are no site line issues. In addition, in 2014, the driveway was on south side of the building and an abutter commented that this could affect their use of their driveway so they have flipped this to the north moving it further away from the wetlands.

Mr. Hanley noted that there has been opposition from the abutters since the beginning. The plan has been modified and opposition is still being received. They have attempted to address the concerns they have received by moving completely outside the elevated flood plain at 87 and will actually be higher than the abutting properties and will have no impact during the worst case 100 year storm event. They have added a privacy fence and improved the site lines along Bridge Street. The existing residence is encroaching into the southern lot line and is 2 feet from the lot line to Riverview Avenue and is within the 25 and 50 foot buffer zones. DEP has suggested this plan as an alternative.

Ms. Bartalamia asked what the size of the current structure is and Mr. Hanley noted that the current structure is 20x40; which is smaller than what is being proposed.

Attorney O'Neill noted that the 25 foot setback off of Bridge Street mentioned by Mr. Hanley is a consequence of having done the frontage requirements in the bylaw. They also did some work with the Town Clerk to confirm whether Riverview Avenue is a private or public way and were able to confirm that it is a public way. A May 7, 1987 Annual Town Meeting, Article 11, adopted some 700 streets as public roadways including Riverview Avenue. Attorney O'Neill noted that Riverview Avenue measures 30 feet wide.

Ms. Bartalamia asked if sewer has been installed on Riverview and Attorney O'Neill confirmed this.

Attorney O'Neill noted that the home next door has a building percentage to lot size of 75%.

Mr. Dugan questioned why the applicant is requesting Section 3670. Attorney O'Neill explained that Section 3670 states what needs to happen and the rest of the bylaw is silent when you come before the Board in a demolition or catastrophe situation. Mr. Dugan noted that he feels they do not qualify for Section 3670 as they are not a catastrophe and they have not been demolished. Attorney O'Neill noted that they will be demolishing and Mr. Dugan pointed out that they have not yet. Attorney O'Neill explained that in order to get the building permit they have to demo, but they also have to have the Special Permit in place to request the Building Permit. Mr. Dugan read Section 3670 and noted that it directs to Section 3651. Attorney O'Neill explained that in order to get to 3651 you have to go through 3670.

Mr. Dunn asked why they would not have to be denied by the Building Commissioner first and Attorney O'Neill explained that they would only be if there were a demolition and that they need to demonstrate to the Building Commissioner that the Board has examined this and issued the Section 6 findings and Special Permit. Attorney O'Neill explained that it is critical it be proven that it is no more detrimental than the existing nonconforming use.

Ms. Bartalamia explained that typically the Board is in receipt of a denial letter from the Building Commissioner who states why it was denied and which section of the bylaw applies. Mr. Dugan explained while the Board typically receives a denial letter, it is not necessary.

Mr. Dunn noted that there were two proposals originally and requested paperwork from the DEP decision. Mr. Hanley explained that DEP feels that they are “choking flows” before water can surcharge into the compensatory storage area meaning they have restricted the area the water can surcharge during the extreme storm events to get pass the house and into the compensatory storage area. Mr. Hanley noted that they feel it complies and DEP says it does not because of this restriction. As a result, the home cannot be built in the originally proposed area. Mr. Dugan asked if this is the plan the Conservation Commission issued an Order of Conditions for and Mr. Hanley confirmed this and explained that they do not see any other alternative than the revised plan being presented tonight.

Ms. Bartalamia asked if Conservation Commission approval would still be required and Mr. Hanley confirmed this as they are still within the 200 foot river front area. Ms. Bartalamia discussed the changes in the driveway location and Mr. Hanley reviewed the changes.

Mr. Dunn discussed Item A regarding the Planning Board and read the DEP denial portion aloud and asked if this states that flood insurance would be required if a home were to be built and Mr. Hanley confirmed this. Mr. Dunn discussed the letter of map revision which allowed homeowners to be out of the flood plain. Mr. Hanley explained that if a homeowner was eligible it usually meant that your property is just on the cusp and to be successful you have to show that you are just barely out of it. FEMA has reissued these maps 2 feet higher so unless those homeowners are more than two feet above the old flood plain they will likely be back in the flood plain.

Mr. Dugan opened the hearing to the public.

Keith Anderson of 82 Pleasant Street came forward. Mr. Anderson disclosed that he is a Planning Board member and explained that the Planning Board views this as an improvement to a parcel that has deteriorated over the years. Mr. Anderson has spoken with the abutters with regards to the site lines, etc. and feels that if the applicant can come to terms with the abutters, then it will be an improvement and will be a better tax dollar. Mr. Anderson feels this is the best scenario for this particular property.

Mr. Dugan noted that the only application for the Board is for plan “C-1”.

John Costa of 95 Bridge Street came forward and noted that he has been to several Conservation Commission meetings and every time he brings up something to do with the zoning bylaws and is told it is the wrong board and that he feels tonight’s discussion has been all about the previous plan. Mr. Dugan noted that the Board is in receipt of a letter from Mr. Costa. Mr. Costa noted that the application was denied and is only being brought back because of a couple of minor revisions. Mr. Costa discussed the issues with his line of vision and brush in the area. Mr. Costa noted that he recently had an appraisal done and it states his driveway is currently a blind drive and this new driveway will only make a bad situation worse. Mr. Costa explained that one of the reasons this was denied is it was too close to the street and they have only moved a couple more feet away and he feels that all they have done is “trim” the plan down. Mr. Costa noted that his leaching field abuts the driveway and discussed the issues with snow removal and storage. Mr. Dugan explained that the Board is determining whether this would be more detrimental than what is existing and water concerns is not the real issue of the ZBA. Mr. Costa noted that this is not displacing anyone, no one lives there and the home was used as a summer cottage that will be taller than his home. The home has not been used in 7 years. Mr. Costa feels this was denied

for certain reasons and that these changes are not significant enough. Mr. Costa noted that he is prepared to go to Land Court should it be necessary. Attorney O'Neill asked Mr. Costa how coming out of the driveway blocks their view and Mr. Costa explained that it is the trees and shrubbery. Attorney O'Neill asked if Mr. Costa backs out of his driveway or pulls out and Mr. Costa explained that it does not matter it is still difficult to see. Attorney O'Neill presented an assessor's record of 95 Bridge Street and showed a photograph and asked if that is Mr. Costa's vehicle in the picture where the vehicle is backed into the driveway and Mr. Costa noted that it is an old picture. Attorney O'Neill provided a copy of the assessor's record to the Board.

Mr. Hanley explained that they are willing to clean up the trees to improve the site lines and work with the abutters on this. Mr. Dugan agreed that the site lines are very difficult and asked if all of the brush to Bridge Street will be cleared and Mr. Hanley noted that the small portion they own will be grass.

William Connors of 110 Bridge Street came forward and stated that he would like to focus on the line drawn and that based on the line drawn the car would already be $\frac{3}{4}$ into Bridge Street so it is inaccurate.

Kyle Boyd, Town of Tewksbury Conservation Agent, came forward and explained that this is an extremely complicated case and that he met with the Director of Community Development, DPW, Town Engineer, and Town Manager and all agree that this is the best plan for the site. Mr. Boyd explained that they have reviewed every requirement of the driveway application requirements and they all have been met and, from a Conservation Commission stand point, this is a much better plan. The Conservation Commission strongly endorses the plan being presented. Mr. Boyd noted that during the pretrial conference period, DEP had stated that they would prefer the alternative plan.

Mr. Hanley requested Mr. Boyd explain the impact of the existing structure and Mr. Boyd explained that it is a great concern and is a hazard. The existing home will not sustain a 100 year storm.

William Connors of 110 Bridge Street came forward and noted that this started because Conservation said it is a buildable lot. Mr. Dugan explained it is a buildable lot as there is already a structure on the property. Mr. Connors agreed this is the best location for the new structure; however, there is no place for the water to go. The options are to redirect it down Bridge Street, down Riverview Street or onto Mr. Costa's leaching field; none of which are good options. Mr. Dugan noted that when the Board did the first site walk, he was not happy with the proposed location at that time either. Mr. Connors noted that one of the things he liked with the original plan was the way the water was being drained. Mr. Dugan asked if the first plan that was approved by the Conservation Commission could ever be built and Attorney O'Neill explained it could not. Mr. Hanley explained that they would have to go through the adjudicatory process with DEP to see if it was possible.

Jim Bruce of 2 Riverview Avenue came forward and noted that he agrees this is the best location for the home and explained that he spoke with Mr. Mackey who informed him he got approval from DEP and FEMA and he in turn informed him that he was going to DEP and Mr. Boyd to ensure that they knew what was going on with the trees being removed. Mr. Boyd then stopped

the process as two Orders of Conditions were violated. Mr. Bruce noted that at the November, 2015 pretrial conference one of the questions asked by the DEP Attorney was who owns the property as there are three names on FTO Realty and the answer was that the property is in Land Court. Mr. Bruce asked who the variance is being given to as Lorraine is the only one alive and she is in a nursing home. Attorney O'Neill explained that a closing was to take place tomorrow; however, the Attorney that represents the seller, Attorney Newhouse, needed to go to the Land Court to approve the deed and this is the sole delay. Mr. Bruce asked if a variance could be granted if there is no owner and Mr. Dugan explained that what is granted is for the property. Mr. Dunn asked who is representing FTO Realty Trust and Attorney O'Neill noted that he is.

Doug Sears of 80 Geiger Drive came forward and explained that he knows this area and the people well and that he understands the 3651 section. Mr. Sears noted that this section states that the Board can issue a special permit if it determines a change of the proposed modification is not more substantially detrimental than the existing nonconforming structure. The existing structure has been there for many years and is being proposed to be removed. Mr. Sears explained that if the home is removed and nothing is rebuilt then all of this goes away. As a result, a new structure would be more substantially detrimental to the neighborhood and he does not see how this section could apply. Mr. Sears noted that the only hardship is a financial one.

Mr. Dugan suggested taking a 10 minute recess.

MOTION: Mr. Dunn made the motion to take a 10 minute recess; seconded by Ms. Bartalamia and the motion carried 3-0.

The meeting was called back to order at 8:54 p.m.

John Costa of 95 Bridge Street came forward and noted that everyone coming forward is saying that this is the best location for the home and they do not live here or has the possibility of getting flooded. Mr. Costa noted that this would be a detriment to him. Mr. Dugan noted that the Board is in receipt of a letter from Mr. Costa which Mr. Costa had requested be read into the record; however, Mr. Costa has touched upon the points of his letter. Mr. Costa noted that he is okay with the letter not being read into the record so long as they are discussed this evening. Mr. Dugan asked if there is a location for the home that Mr. Costa would be in agreement with and Mr. Costa explained that "maybe" if it was not so close to his home and noted that he does not feel this is a build able lot. Mr. Costa noted that stilts may also be a better option, but he still does not feel that this is a buildable lot. Mr. Costa noted that when he purchased his home he was told it was conservation land. Ms. Bartalamia explained that many people are told conservation land when it is really wetlands and privately owned. Mr. Costa noted that he also did not know that his home was nonconforming when he purchased it.

Karen McCarthy of 50 Riverdale Ave came forward and noted that she lives behind the home that is to be built and noted that she lives in the neighborhood and has flooded several times and has had to raise her home. Ms. McCarthy feels this is the best plan for the house and noted that she "is sick of looking at the shack" and is very much in favor of this proposal.

Mr. Connors came forward and noted that Ms. McCarthy is on the other side of the river and not exactly in this neighborhood. Mr. Connors explained that he would like to discuss section 3651 "not more detrimental than the existing structure" as he does not see how the existing structure is

detrimental as it is not hurting anyone; however, the proposal is detrimental. Mr. Dugan explained that the existing homeowner has a right to do something with the property and the small shack on the property is a detriment to the owner of the property. Mr. Connors agreed so long as it does not affect the neighbors. Mr. Connors suggested putting more money into the project and possibly putting the home on stilts as it would have less of an impact on the neighborhood. Mr. Connors discussed some of the safety issues and noted that he was happier when the driveway was on the other side. Mr. Dugan noted that the driveway was moved as another abutter was not happy. Mr. Connors discussed snow removal and noted that there is no place to put the snow except on Bridge Street, Riverview or onto Mr. Costa's leaching field. Mr. Dugan noted that there will be a 6 foot privacy fence. Mr. Connors feels the area is too compact to put a home and explained that Mr. Costa's driveway is currently very dangerous and he should be provided a clear view to enter and exit his driveway. Mr. Connors noted that there is only 9 feet from the property line to the house and from the house to edge of pavement it is approximately 15 feet. Mr. Connors noted that the 15 feet would be reduced by 4 feet for the stairs. Mr. Connors discussed the possibility of damaging the property while plowing snow and noted that there are many safety issues. Mr. Connors suggested the members visit Mr. Costa's property to see the safety issues with his driveway and site line.

Discussion took place on the local Conservation Commission violation that was issued. Mr. Boyd explained that he was called by the abutters and went to the site. There was a dispute as to whether the trees being removed where what was shown on the plans. As a result, he visited the site with Mr. Hanley and determined that there was at least one tree, possibly two others, that should not have been removed that was. Mr. Boyd noted that this had nothing to do with the current proposal and is an entirely separate issue.

Mr. Bruce came forward and noted that there were several trees removed that should not have been.

Mr. Connors requested the Board deny the plan based on the negative impact it will have on the neighborhood and abutters.

Ms. Bartalamia explained that three different plans have been discussed and asked if the driveway being moved was to accommodate Mr. Bruce. Mr. Bruce came forward and explained that his concern is that the driveway was in the flood plain and a car will float at 2 feet of water. As a firefighter this is a safety concern for him.

Attorney O'Neill explained that no one is going to be 100% happy and that DEP and all other town board and departments involved have said to the Board that this is the best location possible. Attorney O'Neill explained that the problem is that it affects personal issues and noted that the room is not full of people who are not happy, there are just a few who have been vocal. Attorney O'Neill questioned why the owner should not be allowed to put their property to their best use as much as any other taxpayer or homeowner in town. Attorney O'Neill noted that when the neighbors contacted DEP it started this whole process. All of the town boards involved have said that this is the best plan in place. Bartalamia noted that the owner does not have an absolute right to do what they want and when an abutter expresses concerns with drainage it is a valid concern. Attorney O'Neill agreed and requested Mr. Hanley be allowed to review the drainage plan.

Mr. Hanley explained that there are three things that effect drainage and reviewed the drainage plan. Mr. Hanley noted that they are aware that they absolutely cannot increase the flow of water to 95 Bridge Street. Discussion took place on implementing a condition that the gutters and/or drains must remain in place.

Mr. Connors noted that he would like to know how the existing structure is detrimental. Mr. Boyd explained that the existing structure is in the river and in very poor condition. The home is eroding into the river which is a detriment to the public health. Mr. Dugan noted that one of the abutters who stood up stated that she did not like seeing it. Mr. Connors noted that it is not harmful to anyone. Mr. Boyd noted that when he visited the site he was shocked to see a house there in that condition.

Mr. Dugan noted that he would like to do an additional site walk and requested the property and new location of the driveway be staked out.

Mr. Hanley explained that they are up against a very rigid process with DEP as they have issued a Stay of the adjudicatory process.

Attorney Laurie Ingall came forward and noted that she works with town counsel and has been working with the town on the litigation. Attorney Ingall explained that if the Board votes in favor of the plan, it will moot the litigation. If the Board denies the request, the hearing will go forward on February 11, 2016. Attorney Ingall noted that the town is a party to this lawsuit.

Mr. Dugan suggested requested a meeting be scheduled next week and conducting the site walk prior to that to get the matter resolved prior to the February 11, 2016 hearing. Attorney Ingall noted that she is not sure what DEP's next step would be if action is not taken on the matter tonight.

James Mackey of FTO Realty Trust came forward and noted that he is the applicant and the intent was to resolve this matter tonight to eliminate the legal proceedings and he is not sure if DEP would be willing to issue another Stay.

Mr. Connors asked if the applicant can bring this matter forward again if the Board denies this request and Mr. Dugan noted that if changes are made they can.

Mr. Dugan suggested a site walk by the Board members on January 31, 2016. The members will individually visit the site during the day at a time convenient for each. No quorum of members will be present at one time. The applicant will ensure the area is properly staked out for the site walk.

MOTION: Mr. Dunn made the motion to continue FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, C/O Paula Barry) for a variance from Section 3600, Paragraph 3640 and Special Permit under Section 3600, Paragraph 3651 and 3670 of the Tewksbury Zoning Bylaw. The applicant proposes to construct a single family residence within the front yard as show on plans filed with this Board. Said property is located at 20 Riverview Avenue, Assessor's Map 98, Lot 121, zoned Residential to

**Thursday, February 4, 2016 at 6:30 p.m. at the Tewksbury Town Hall;
seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA**

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DUGAN, DUNN, BARTALAMIA**

New Business

There was no new business.

Old Business

There was no old business.

Adjourn.

MOTION: Ms. Bartalamia made the motion to adjourn; seconded by Mr. Dunn and the motion carried 3-0.

Approved: February 25, 2016

*List of documents for 1/28/16 Agenda
Documents can be located at the Community Development Office*

Approval of Minutes – December 17, 2015

CONTINUED NEW HEARING

6:30 GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, dba Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.

(Applicant requesting to be continued to February 25, 2016.)

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- *Application packet dated 1/6/15*