



# 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 February 25, 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, Gerald Kutcher, Diane Bartalamia, and Jaime Doherty.

### Approval of Meeting Minutes – December 17, 2015

### NEW HEARINGS

**Christine Kydd** under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector. Said property is located at **31 Floyd Avenue**, Assessor's Map 25, Lot 141, owned by John Curseaden, zoned Residential.

**MOTION:** Mr. Dunn made the motion to continue Christine Kydd under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector. Said property is located at 31 Floyd Avenue, Assessor's Map 25, Lot 141, owned by John Curseaden, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
**DUGAN, DUNN, KUTCHER**

**MOTION:** Mr. made the motion to take a 10 minutes recess; seconded by Mr. and the motion carried 5-0.

**Richard Martel, Jr., Manager, Martel Realty, LLC**, for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaws to raze the existing structures and construct a new building for automotive repair, welding, and machinery shop uses with associated office and parking and permitted accessory uses as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned WNBD.

Present was Attorney Richard O'Neill and Matthew Hamer, Civil Engineer, Lowell, MA. Attorney O'Neill explained that slightly after the application was submitted to the Board he and Mr. Hamer met and determined that the site plan that was used to complete the application for the Special Permit was not the correct plan that was to come to the Board and was the plan submitted to the Planning Board prior to the 2015 changes. Mr. Hamer provided the Board

members with a copy of the plans. Attorney O'Neill explained that the Board previously approved the variance, Case 150301, and also approved variances shown on the older plan. There are three 25 foot setbacks and a rear setback of 15 feet. It was noted that there is frontage on three streets.

Attorney O'Neill explained that relief is also being sought from Section 3620, as noted in the amended application, as well as from Section 3651. Attorney O'Neil read Section 3651 aloud and explained that in an effort to avoid confusion, and because they are seeking to extend the uses, both parcels, 500 Woburn Street and 105 Lowell Street, are being shown. The property located at 500 Woburn Street is built out, fully permitted, and has been approved by the Planning Board. Attorney O'Neill explained that approval has been received for the setbacks to allow for the structure at 105 Lowell Street and the final step is to extend the existing uses from 500 Woburn Street to 105 Lowell Street.

Mr. Dugan asked if the applicant is seeking to transfer the uses on the two existing buildings to include the new building and Attorney O'Neill confirmed this and explained that this must be done by special permit and a Section 6 finding is also required that this is not more substantially detrimental.

Attorney O'Neill discussed IRA Toyota and explained that they recently extended their existing automotive use to the adjacent parcel. The applicant is requesting to extend the automotive uses including the machine shops.

Mr. Hamer noted that they are scheduled to go before the Planning Board on March 3, 2016.

Mr. Dugan noted that the agenda states a variance from Section 4130, Appendix B and a Special Permit from Section 3651 and asked if the applicant is also adding Section 3620 and Attorney O'Neill confirmed this. Mr. Dugan noted that Section 3651 is increasing the nonconforming use and Attorney O'Neill explained that this use is nonconforming since 2004; however, the use was in place prior to 2004. Mr. Dugan asked if they are currently conforming or nonconforming and Attorney O'Neill explained that they are nonconforming. Mr. Dugan asked if a welding shop and machine shop are allowed in the WNBD and Attorney O'Neill noted that they are not.

Discussion took place on the WNBD and some of the problems that have been encountered with other projects brought before the Board as a result of this district. Attorney O'Neill noted that amendments will likely be coming forward to allow for the ability to waive the dimensional requirements and discussed the importance of synchronizing the zoning in this area with the abutting communities of Billerica and Lowell.

Ms. Bartalamia noted that the request is only for the use special permit and not on the building specifics and Attorney O'Neill confirmed this and explained that the uses are currently permitted and this is an extension of those uses to the abutting property.

Mr. Dugan discussed Section 3210 and noted it states that any uses permitted as a principal use is also permitted as an accessory use and asked why any relief is needed as a permit has already been issued to allow the use. Attorney O'Neill explained that the use is considered nonconforming.

Mr. Hamer explained that this issue arose during the Planning Board process as the result of the changes that were made in 2015. They met with Steve Sadwick, Director of Community Development, and Mr. Johnson and were told that they would require a Special Permit for the extension of a preexisting nonconforming use. Mr. Dugan asked if they were by right prior to the WBND and Mr. Hamer confirmed the use was by right at one point. A Special Permit was received from the Planning Board for the size of the structure in June, 2008 for Woburn Street.

Discussion took place on the advertisement not being for Section 3620 and Mr. Dugan noted that the amended application requests Section 3620.

**MOTION:** Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Mr. Dunn made the motion to approve Richard Martel, Jr., Manager, Martel Realty, LLC, for a Special Permit from Section 3620 of the Tewksbury Zoning Bylaws for the extension of the existing automotive uses (motor vehicle light service, motor vehicle general body repair, and welding machinery shop); which are currently existing at the parcel owned by the applicant located at 500 Woburn Street, Assessor's Map 3, Lot 96, to the adjacent parcel located at 105 Lowell Street, Assessors' Map 3, Lot 96, as referenced in the amended application; seconded by Mr. Kutcher and the motion unanimously carried 3-0.  
DUGAN, DUNN, KUTCHER

**MOTION:** Mr. Dunn made the motion to approve Richard Martel, Jr., Manager, Martel Realty, LLC, for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaws to expand the nonconforming use for the purpose of constructing a new 8,125 square foot industrial building to be used in accordance with the terms of automotive repair, welding and machinery, the Board determines that this will not be substantially more detrimental; seconded by Mr. Kutcher and the motion unanimously carried 3-0.  
DUGAN, DUNN, KUTCHER

#### **New Business**

There was no new business.

#### **Old Business**

There was no old business.

#### **Adjourn.**

**MOTION:** Mr. Kutcher made the motion to adjourn; seconded by Ms. Doherty and the motion carried 5-0.

*Approved: 3/31/16*

Approval of Minutes – January 28, 2016

## **NEW HEARINGS**

- 6:30**      **Christine Kydd** under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector. Said property is located at **31 Floyd Avenue**, Assessor's Map 25, Lot 41, owned by John Curseaden, zoned Residential.
- *Application packet received 12/3/15.*
- 6:30**      **Richard Martel, Jr., Manager, Martel Realty, LLC** for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structures and construct a new building for automotive repair, welding and machinery shop uses with associated office and parking and permitted accessory uses as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned WNBD.
- *Application packet received 2/9/16.*