



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

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

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES APRIL 30, 2015

The meeting was called to order by Rob Dugan, Chairman, at 6:30 p.m. at the Pike House (temporary town hall). Present at the meeting were Gerald Kutcher, Diane Bartalamia, and Melissa Johnson, Recording Secretary.

Len Dunn and Jaime Doherty were not in attendance.

Approval of Meeting Minutes – March 26, 2015

MOTION: Mr. Kutcher made the motion to approve the March 26, 2015 meeting minutes; seconded by Ms. Bartalamia and the motion carried 3-0.

CONTINUED NEW HEARINGS

Marguerite J. Bradshaw/Chester Briggs as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at **967 Main Street**, Assessor's Map 47, Lot 75, zoned Commercial.

Mr. Dugan noted that the Board is in receipt of correspondence from the applicant requesting to continue this matter to June 25, 2015.

MOTION: Mr. Kutcher made the motion to continue Marguerite J. Bradshaw/Chester Briggs as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at 967 Main Street, Assessor's Map 47, Lot 75, zoned Commercial to June 25, 2015 at 6:30 p.m.; seconded by Ms. Bartalamia and the motion carried 3-0.

DUGAN, KUTCHER, BARTALAMIA

Richard and Donna Sullivan as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at **542 Kendall Road**, Assessor's Map 79, Lot 103, zoned Residential.

Mr. Dugan noted that he is an abutter to this project. As a result, he will recuse himself once the matter comes up for hearing; however, given there are only three members present, Mr. Dugan called for the continuance of this matter.

The applicant has requested to continue this matter to May 28, 2015

MOTION: **Mr. Kutcher made the motion to continue Richard and Donna Sullivan as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at 542 Kendall Road, Assessor's Map 79, Lot 103, zoned Residential to May 28, 2015 at 6:30 p.m.; seconded by Ms. Bartalamia.**

TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc. for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District.

Present was Attorney John Smolak. Mr. Dugan noted that the applicant has submitted a late request to continue this matter to May 28, 2015.

Mr. Dugan explained that at the previous meeting the Board had continued this matter as they were seeking the guidance of Town Counsel as to whether the issuing of two variances is allowable. Town Counsel has submitted correspondence stating that this is allowable.

MOTION: **Mr. Kutcher made the motion to continue TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc. for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at 265 Main Street, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District, to May 28, 2015 at 6:30 p.m.; seconded by Ms. Bartalamia and the motion carried 3-0.**

Richard Martel for Martel Realty, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct at 65' x 100' one story structure as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned Heavy Industrial.

Present was Matt Hammer of Robert Gill Associates and the applicant, Richard Martel. Mr. Hammer explained that at the previous meeting, the applicant requested a continuance as some of the abutters had expressed concerns with noise. As a result, get they have revised the plan and

relocated the proposed building to address these concerns. Mr. Hammer showed the location of the previous proposal as well as the new location on the plan. The noise from the activity on the site will now resonate towards Main Street rather than the neighborhood behind this site. Mr. Hammer explained that they will be removing the existing building and driveway coming off of Lowell Street and restoring the curb cut with vegetation and curbing. The applicant will work with the Planning Board and Town Engineer on these matters during the site plan approval process.

Mr. Dugan noted that the building is 5 feet closer to James Avenue on the revised plan than what was originally proposed and asked why. Mr. Hammer explained that they have discussed this with the neighbors and have determined this distance to allow for better maneuvering of the trucks on the site based on the radius software that was used for the vehicles.

Mr. Dugan noted that the building would now be 125 feet long as opposed to the original 100 feet; however, the request still states 65 square feet. Mr. Hammer noted that the typo is the 100 square feet and that it should be 125 feet.

Mr. Dugan noted that there will be a seven foot fence with screen slats along Kernwood and Mr. Martel confirmed this and noted there will also be a fence and slats along Lowell Street and James Avenue.

Ms. Bartalamia asked if the doors of the existing building face Kernwood. Mr. Martel explained that the building that abuts James Avenue faces Kernwood; the new building will help create a buffer and the garage doors will open towards James Avenue. Mr. Hammer noted that all of the traffic will come in from Woburn Street and there will be no access from any of the other streets. Mr. Dugan asked if there is an emergency road access. Mr. Martel noted that there is an existing emergency access drive off of James Avenue.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

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

**MOTION: Mr. Kutcher made the motion to approve Richard Martel for Martel Realty, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct at 65' x 125' one story structure as shown on plans filed with this Board. Said property is located at 105 Lowell Street, Assessor's Map 3, Lot 96, zoned Heavy Industrial, reference shall be made to plans dated April 9, 2015; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, KUTCHER, BARTALAMIA**

NEW HEARINGS

Thomas and Lisa Madore for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a second level on the existing addition as shown on plans filed with this Board. Said property is located at **79 Valley Road**, Assessor's Map 105, Lot 6, zoned Residential.

Present was Thomas and Lisa Madore of 79 Valley Road. Mr. Madore explained that they would like to build up on their existing addition with 2 bedrooms and a set of stairs. Mr. Madore explained that they have two family members who have fallen on hard times and they have offered to open up their home to them.

Mr. Dugan noted that the existing addition has side setbacks of 17.7 feet and 7.3 feet from the property line where 15 feet is required. A special permit is required as this is an existing nonconformity. Mr. Dugan asked if a variance was obtained for the original addition and Mrs. Madore confirmed this and noted that the addition was constructed in 1996.

Mr. Dugan asked if the property is connected to town sewer and Mr. Madore confirmed this.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

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

MOTION: Mr. Kutcher made the motion to Thomas and Lisa Madore for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a second level on the existing addition as shown on plans filed with this Board. Said property is located at 79 Valley Road, Assessor's Map 105, Lot 6, zoned Residential; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, KUTCHER, BARTALAMIA

John Berube for Greenmont Realty Trust for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at **60 First Street**, Assessor's Map 81, Lot 198 and 167, zoned Residential.

Present was John Berube of 2543 Main Street, Tewksbury. Mr. Berube explained that he is proposing to construct a single family, 36 x 26 split gambrel home located on First Street. Mr. Berube explained that because of typographical issues with the wetlands, he is required to move the location of the home closer to the street. In addition to the wetlands, there is a paper street, New Jersey Road, located to the left which requires a front yard setback. Mr. Dugan explained that because this is a corner lot, there are two front yard setbacks and asked if they are proposing distances of 18 feet from the edge of pavement and 12 feet from the edge of property line and Mr. Berube confirmed this. Mr. Dugan asked if the walkway has stairs going up. Mr. Berube explained that there will be one or two steps from the driveway to the walkway and the stairs into the home will have four or five steps. Mr. Dugan noted that the plan is showing approximately 8 feet of landing off the front of the home and Mr. Berube confirmed this.

Mr. Dugan asked when the original home was constructed and Mr. Berube explained that there was never a home on this lot and noted that the subdivision was created in 1907.

Ms. Bartalamia noted that the first page of the application states 34 x 26 and there are indications in other areas, including the plan, that state 36 x 26. Mr. Berube noted that the correct size is 36 x 26.

Mr. Dugan expressed concerns with the front stairs being so close to the street and asked if the stairs could be turned towards the home. Mr. Berube noted that he does not believe the stairs could be turned as there may not be sufficient space from the door to the garage. After further review of the plans, it was determined that this would not be a possible option.

Ms. Bartalamia asked if the Conservation Commission has approved this matter and Mr. Berube explained that there was an error with the abutter notifications at the previous Conservation meeting and, as a result, the matter will be before the Commission on May 13, 2015. Ms. Bartalamia asked if any of the wetlands will be impacted. Mr. Berube explained that they are proposing an approximate 400 square foot wetland replication. Ms. Bartalamia asked if there is another home located to the deck side of the proposed home and Mr. Berube explained that there is a home located "further down on this side". Mr. Berube noted that the homes on both sides of this home are also closer to the street than the 25 foot setback.

Ms. Bartalamia noted that she is not in receipt of a letter from the Building Commissioner. Mr. Berube explained that he has not yet filed for a building permit as he is awaiting approval from the ZBA and Conservation Commission.

Ms. Bartalamia requested to review the distances. Mr. Dugan referenced the application packet that was submitted by the applicant and noted that there is 12 feet to the property line and 18 feet to the edge of pavement. In addition, because of New Jersey Road that side is also considered a front yard setback so 25 feet is required. As a result, 13 feet of relief is being sought for the front and 11 feet of relief is being sought from New Jersey Road. All other setbacks are met; however, there could be issues with the rear of the property and the wetlands which would be a matter for the Conservation Commission.

Ms. Bartalamia asked where the replication would be located. Mr. Berube explained that the replication area would be located to the left of the deck area and will be approximately 400 square feet. Ms. Bartalamia asked if there is any reason the home cannot be pushed back three feet. Mr. Berube explained that this would depend on the Conservation Commission's approval and would likely result in additional replication.

Mr. Dugan opened the hearing to the public.

Hector Montes of 49 New Jersey Road came forward and noted that he has concerns with an increase of water as a result of this project and noted that there is a drain in the back of his yard that could be affected as the water runs this way during heavy rains. Mr. Berube explained that the grade in Mr. Montes backyard is lower than the road so the water "pockets" in this area. As a result, there is a culvert that runs under the road and discharges out to the property owned by Mr.

Berube. Mr. Berube noted that he has no intentions on touching the culvert or working in that area. Mr. Dugan explained that wetland and water issues are matters addressed by the Conservation Commission and the Board of Appeals determines the front and side yard setbacks. Mr. Montes noted that the reason this lot has remained undeveloped for so long is because it is wetlands. Mr. Montes explained that his neighbor is trying to expand his deck and is unable to do footings because of the wetland buffers and asked how this can be done if a deck cannot be.

Gail Montes of 49 New Jersey Road came forward and expressed the same concerns with the wetlands as Mr. Montes. Mrs. Montes noted that Mr. Berube did a great job on the other homes he recently built in this area and expressed concerns with the frontage to the road being short as there are many children in this area and there is a lot of car traffic.

Discussion took place on the possibility of pushing the home closer to New Jersey Road and further back to lengthen the driveway. Mr. Berube explained that he is not sure if this is something the Conservation Commission would be agreeable to as it may require additional wetland replication as there would be more wetland disturbance.

Mr. Dugan asked if the Montes' would be happier if the home was pushed back to allow the driveway to be longer and Mrs. Montes noted that it would make it a little better as it would be safer for the children and residents in this area.

Mr. Dugan asked how long the driveway is at the home Mr. Berube recently did in this area. Mr. Berube showed the plans for 50 First Street and noted that the driveway is 13 feet to the edge of pavement. Mr. Dugan noted that the plan for 50 First Street shows a small turn around pocket on the driveway and asked if this can be done at this location to prevent cars from backing out of the driveway. Mrs. Montes noted that the home previously done by Mr. Berube set a precedence for homes in this area being closer to the street with shorter driveways. Mr. Berube explained that there was a home proposed prior to his that set the precedence. Mrs. Montes noted that she would be happier with a turnaround area for the driveway. Mr. Berube confirmed the turnaround area will be added.

Mr. Dugan explained that he would like to see how far the Conservation Commission is willing to allow the home to be pushed further towards New Jersey Road and the wetlands and the ZBA could then offer additional relief from New Jersey Road and this would pull the front stairs further from the street. Mr. Dugan suggested continuing this matter to the May 28, 2015 meeting as the applicant will be before the Conservation Commission on May 13, 2015.

Mr. Dugan requested the minutes from this hearing be provided to the Conservation Commission for their consideration.

MOTION: Mr. Kutcher made the motion to continue John Berube for Greenmont Realty Trust for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at 60 First Street, Assessor's Map 81, Lot 198 and 167, zoned Residential to May 28, 2015 at 6:30 p.m., the meeting minutes from this hearing shall be provided to the Conservation Commission prior to their May 13, 2015 meeting; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, KUTCHER, BARTALAMIA

New Business

Mr. Dugan noted that he is in receipt of correspondence to the Board from the Citizen's Housing Planning Association who is the monitoring agent for the three 40B projects in Tewksbury: Robert's Reach, Livingston Place, and Shawsheen Woods. Mr. Dugan read the letter aloud and explained that the purpose of the letter is to provide the Board with an update on the services they have provided to date.

Old Business

There was no old business.

Adjourn.

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

Approved: 5/28/15

*List of documents for 4/30/15 Agenda
Documents can be located at the Community Development Office*

Approval of Minutes – March 26, 2015

CONTINUED NEW HEARINGS

- 6:30 P.M. Marguerite J. Bradshaw/Chester Briggs** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated August 15, 2014 as filed with this Board. Said property is located at **967 Main Street**, Assessor's Map 47, Lot 75, zoned Commercial.
(Applicant is requesting to be continued to June 25, 2015.)
- Letter dated 4/28/15 fr Attorney O'Neill re: Request for Continuance.
- 6:30 P.M. Richard and Donna Sullivan** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at **542 Kendall Road**, Assessor's Map 79, Lot 103, zoned Residential.
(Applicant is requesting to be continued to May 28, 2015.)
- Letter dated 4/28/15 fr Attorney O'Neill re: Request for Continuance.
- 6:30 P.M. Richard Martel for Martel Realty, LLC** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 65' x 100' one-story structure as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned Heavy Industrial.
- Copy of Plan entitled "Board of Appeals Plan of Land", Tax Map 3, Lot 96, 105 Lowell Street, Tewksbury, MA; dated March 3, 2015, revised April 9, 2015; prepared for: Martel Welding & Sons, 500 Woburn Street, Tewksbury, MA; plan prepared by: Robert M. Gill Engineering & Surveying, PO Box 309, Andover, MA.
- 6:30 P.M. TMC CF New England LLC for Marc P. Ginsburg & Sons, Inc.** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District.
- Letter dated 4/30/15 fr Attorney Smolak re: Request for Continuance.

NEW HEARINGS

- 6:30 P.M. Thomas and Lisa Madore** for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a second level on the existing addition as shown on plans filed with this Board. Said property is located at **79 Valley Road**, Assessor's Map 105, Lot 6, zoned Residential.
- Application packet date 4/1/15.
- 6:30 P.M. John Berube for Greenmont Realty Trust** for a variance under Section 4130 Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at **60 First Street**, Assessor's Map 81, Lots 198 and 167, zoned Residential.
- Application packet date 4/5/15.