



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 December 17, 2015

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, Jaime Doherty, Diane Bartalamia, and Melissa Johnson, Recording Secretary.

Approval of Meeting Minutes – November 19, 2015

MOTION: Mr. Dunn made the motion to approve the November 19, 2015 meeting minutes; seconded by Mr. Kutcher and the motion carried 5-0.

NEW HEARINGS

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.

Mr. Dugan noted that the Board is in receipt of correspondence requesting to continue this matter to January 28, 2016.

Attorney O'Neill explained that they are seeking a request as the result of conversations with Steve Sadwick, Director of Community Development, who has indicated that he would prefer to see paragraph one of the initial application amended. Attorney O'Neill explained that he would like to ensure that the Board is aware of the source for which they are requesting a variance and noted that they will be coming back before the Board with the amended application as printed in the correspondence provided.

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 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 to January 28, 2016 at 6:30 p.m.; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER**

An abutter came forward and asked why the matter is being continued and Mr. Dugan explained that the applicant will be amending paragraph one of the application as outlined in Attorney O'Neill's correspondence. Mr. Dugan read the paragraph aloud. Attorney O'Neill provided the abutter with a copy of his correspondence to the Board.

CONTINUED HEARINGS

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.

Present was Attorney Richard O'Neill. Attorney O'Neill explained that the matter is before the board as the result of a zoning violation filed by the Building Commissioner. The matter has been continued several times to allow for time to work with the Building Commissioner on a resolution to the matter. Attorney O'Neill explained that they have to come to a common understanding with the Building Commissioner to go before the Planning Board to obtain the necessary permits; which has been done and approved. As a result, the matter has now been resolved and they are requesting to withdraw without prejudice.

**MOTION: Mr. Kutcher made the motion to withdraw 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, without prejudice; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, DUNN, KUTCHER**

James Heider for a variance from Section 4000, Paragraph 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.

James Heider for a Special Permit from Section 3600, Para 3651 of the Tewksbury Zoning Bylaw to construct an addition onto a pre-existing non-conforming structure as shown on plans filed with this Board. Said Property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.

Present was Kenneth Lanier of Cornerstone Land Consultants, Pepperell, MA and the applicant, James Heider of 12 Forest Street. Mr. Lanier explained that at the previous meeting the Board had expressed concerns with the violations that were still in existence at that time and requested Mr. Heider remove the violations and come back before the Board. Mr. Lanier provided photographs showing the trailer having been removed and the lean to before and after. Mr. Lanier explained that they also filed for the Special Permit as discussed at the previous hearing for the preexisting nonconforming alteration.

Mr. Dugan explained that at the previous meeting there were concerns with the violations and asked if the violations have been addressed to the town's satisfaction. Mr. Lanier explained that he has not officially obtained the "okay" from the Building Commissioner as to whether he is satisfied.

Mr. Dunn asked if drawings of what is being proposed have been submitted and Mr. Lanier explained that a plot plan, renderings, and floor plan drawings were provided with the original variance application.

Mr. Dugan reviewed the violations which include: structure attached to the rear of the home, existence of a contractor's yard, existence of commercial vehicles, and existence of a storage shell. Mr. Lanier noted that these items have all been addressed.

Mr. Dugan noted that the Building Commissioner, Edward Johnson, is present and asked if Mr. Johnson would like to speak on this matter. Mr. Johnson provided the members and applicant with correspondence from Town Counsel indicating some additional language he would like the Board to consider. Mr. Lanier reviewed the correspondence provided by Mr. Johnson and noted that they would be in agreement with the condition suggested by town counsel.

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

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 James Heider for a Special Permit from Section 3600, Para 3651 of the Tewksbury Zoning Bylaw to construct an addition onto a pre-existing non-conforming structure as shown on plans filed with this Board. Said Property is located at 12 Forest Avenue, Assessor's Map 4, Lot 4, zoned Heavy Industrial, the garage shall be used for residential purposes only with no commercial, industrial or non residential uses whatsoever including the storage and parking of commercial vehicles and equipment except as provided by the zoning bylaws, Appendix A, Section C; which allows for one light commercial vehicle. Any violation of this condition shall be sufficient reason to revoke the special permit and the garage shall be removed; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

MOTION: Mr. Dunn made the motion to approve James Heider for a variance from Section 4000, Paragraph 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at 12 Forest Avenue, Assessor's Map 4, Lot 4, zoned Heavy Industrial for side, rear, and front setbacks; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

Jason Barrett for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to construct a second floor addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at **14 South Amos Street**, Assessor's Map 70, Lot 151, zoned Residential.

Present was Jason Barrett of 14 South Amos Street. Mr. Barrett explained that he would like to construct a second floor and walk up attic onto their home. Mr. Barrett noted that the house is a ranch style home and the setback is at 24.7 feet, as a result they require a variance. Mr. Barrett explained that they are not expanding the footprint and will be constructing up; however, the home bumps out where it is 24.7 feet.

Mr. Dugan noted that they are 5 inches too close to the property line and always have been and Mr. Barrett confirmed this.

Mr. Dunn requested a photograph of what is being proposed and Mr. Barrett provided plans to the Board.

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

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. Kutcher made the motion to approve Jason Barrett for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to construct a second floor addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at 14 South Amos Street, Assessor's Map 70, Lot 151, zoned Residential; seconded by Mr. Dunn and the motion carried 3-0.

DUGAN, DUNN, KUTCHER

Premier Storage Investors for AMC Realty Group, LLC for a variance under Section 4130, and Appendix B of the Tewksbury Zoning Bylaw for a proposed 96,800 sq. foot mini warehouse/self storage facility with appurtenant drives, parking, storm water and utility improvements as shown on plans filed with this Board. Said property is located at **395 Woburn Street**, Assessor's Map 4, Lots 61 and 62, zoned Westside Neighborhood Business District.

Present was Pete Williams, Principal of Premier Storage Investors, 4060 Robinwood Cove, Memphis, TN 38111, Attorney Richard O'Neill, and Earl Blatchford of Hayner Swanson, 3 Congress Street, Nashua, NH

Mr. Williams explained that they are a self storage company with the strategy of developing self storage facilities in major metropolitan areas and upscale neighborhoods collaborating with planning departments, Planning Boards, and other committees to provide beautiful and aesthetically pleasing self storage facilities. They currently have development projects in New Jersey, Florida, and Texas.

Attorney O'Neill explained that the application that is advertised in the paper states a variance under "Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed 96,800 sq.

foot mini warehouse/self storage facility with appurtenant drives, parking, storm water and utility improvements as shown on plans filed with this Board” located at 395 Woburn Street. Attorney O’Neill noted that what is before the Board is a variance request for the amount of building area that could be put on the site. Attorney O’Neill explained that they are required to build out in accordance with a Planning Board special permit and discussed the December, 2015 edition of the Zoning Bylaws, paragraph D-9, Westside Business District; which is an issue. Attorney O’Neill explained that the Westside Business District was approved by town meeting in September, 2013 and there was very little understanding or advertising of this zoning district. Attorney O’Neill noted that he does not recall anyone getting up at town meeting to speak for or against this and, since its inception; things have come up that do not make this district work such as the land area on the west side of Woburn Street. Mr. Dunn asked who brought this forward at town meeting and Attorney O’Neill explained that it was brought forward by the Planning Board and he has been working with Mr. Sadwick on this. It is Attorney O’Neill’s understanding that it was a concept the Planning Board came up with and that it is the intent of the town to bring forward an article at annual town meeting to address this and change the percentage number back to 35%.

Attorney O’Neill explained that if the area was still zoned heavy industrial, they would be able to build 35% of the land area out as build able space. In the area with the Westside Business District this has been reduced to 15%. Attorney O’Neill noted that the surrounding area is all heavy industrial and explained that they are seeking to be allowed to build out to the 35%

Mr. Dugan asked what the percentage of coverage is and Mr. Blatchford explained that there is small strip approximately 35 feet long that lies in Lowell and noted that they are at 30.7% of the total lot area with the two buildings and the Lowell portion. The land area in Tewksbury is approximately 33%. Mr. Blatchford noted that both are still under the 35% maximum allowed under the previous bylaw.

Mr. Blatchford explained that the site is approximately 3 2/3 acres and located on the westerly side of Woburn Street. There is “just under” 390 feet of frontage along Woburn Street and the lot is heavy treed along the sides and rear. Mr. Blatchford explained that the lot has been disturbed over the years a few times and there is some “shrub scrub” that has established as a result. Mr. Blatchford noted that there is a small isolated pocket wetland area on the westerly property line and explained that the town has an easement that runs along the southerly and westerly boundary that discharges storm water runoff from Woburn Street and the adjacent side streets, and runs through a culvert under the railroad tracks, and discharges to a larger wetland further to the west. Mr. Blatchford noted that the parcel is located along a straight section of Woburn Street and is served by municipal services with town sewer being available across the street at Forest Avenue. The site is abutted on the South by the entrance to a large industrial park, on the west side by B&M Railroad, on the east side with a mix of residential and small commercial users, and on the north side by residential located in Lowell. Mr. Blatchford noted that in 2012, the Planning Board approved a similar plan for a light industrial, multi-tenant, manufacturing proposal and it was never built.

Mr. Dunn asked if the site was Westside District in 2012 and Mr. Bladgeford explained that in 2012 it was still heavy industrial.

Mr. Blatchford explained that they were hired in September and worked with Mr. Williams to develop the plan being presented this evening. The project consists of two, two story buildings for self storage; mini-warehouse. Mr. Blatchford explained that there is a mix of storage unit sizes with some having overhead doors. A majority of the units would be accessible through interior corridors and both buildings will be equipped with elevators off a central corridor. A single entrance drive is being proposed off of Woburn Street with driveway circulation on all sides of the building and 18 parking spaces; which is what the town requires. Mr. Blatchford explained that the previous traffic studies on this site have indicated a requirement of approximately 10 parking spaces for this type of site. Mr. Blatchford explained that the plan is a smaller development footprint than the previously approved site plan; the area of building and pavement is smaller resulting in less impacts. Mr. Blatchford noted that there will only be one small office with a bathroom and that this proposal is much less an intense use than what was previously approved.

Mr. Blatchford explained that the plan was designed on the area being zoned heavy industrial. In early November, it was brought to his attention that this area was not zoned heavy industrial but rather Westside Business District. Mr. Blatchford confirmed with Mr. Sadwick that the area had been rezoned to the Westside Business District at the October, 2015 town meeting making the set back requirement different, as with heavy industrial the setback is 50 feet on all sides and this was reduced to 25 feet front and 15 feet side and rear in the new zoning (Westside Business District), and also reducing the building coverage to 15%. Mr. Blatchford explained that when they started the project, the area was heavy industrial and during the process, the zoning was changed. Mr. Sadwick has indicated to the applicant that they have two choices: go before the Zoning Board for a variance or go before town meeting in May, 2016 to change the zoning back.

Mr. Dugan asked why they need to go before the Planning Board and Attorney O'Neill explained that they require a special permit. Mr. Dugan asked if one building would fit with the 15% coverage and Mr. Bladgefurd explained that one building, reduced in size, would fit.

Attorney O'Neill noted that the actual amendment took place in 2015 and not 2013 as he previously stated.

Mr. Kutcher noted that as a Board member it is his belief that the 15 feet was chosen for a reason and it is his opinion that it was done to provide some protection to the abutters. Attorney O'Neill noted that he addressed this with Mr. Sadwick and it is his understanding that there was never discussion on abutters at the time and that no one spoke against or for increasing or decreasing the numbers. Mr. Kutcher noted that he feels this issue is important enough to go back to the person who proposed the change to see why.

Mr. Dugan noted that Ms. Johnson has provided a copy of the October, 2015 town meeting warrant and the article was brought forward by the Planning Board. Mr. Kutcher suggested obtaining feedback from the Planning Board as to why the change was made.

Edward Johnson, Building Commissioner, explained that he sat in on the meetings regarding this change, and the intent of the change was for the uses in the area as there was a desire to see more of an industrial use as opposed to the commercial. Mr. Johnson explained that the lot coverage was never really discussed and the matter was not looked at as closely as it should have been as there are some things that have already had to be changed and there will be some additional

changes in the future. Mr. Johnson noted that the 15% is even less restrictive than a residential home.

It was the consensus of the Board that the zoning would need to be changed to allow for this and that would have to go before town meeting.

Attorney O'Neill requested a 10 minute recess

MOTION: A motion to take a 10 minute recess was made and seconded. Motion carried 5-0.

The meeting was called back to order at 8:08 p.m.

Attorney O'Neill explained that he has discussed the issues raised by the Board and they feel there are questions that they do have the answers to. It is their understanding that it is the Board's position that because the change was approved by town meeting, it should be corrected by town meeting. Attorney O'Neill respectfully requested to withdraw without prejudice.

Mr. Dugan explained the applicant is requesting to withdraw without prejudice which means the board will not be acting on the matter.

Mr. Dugan opened the hearing to the public.

Kim Scott, 27 Commonwealth Ave, Lowell, MA came forward and noted that she is a direct abutter to the north of the property. Ms. Scott noted that her issue was that the basic argument was them stating that the Planning Board and voters did not know what they were doing. Ms. Scott explained that this process started in January, 2015 and Zoning Bylaw Subcommittee was set up consisting of David Plunkett, Nancy Reed, and Steve Sadwick as members. Ms. Scott noted that the subcommittee met several times to discuss this issue and the Tewksbury Planning Board website states that the change was due to the recommendation of the Northern Middlesex Council of Government (NMCOG) for zoning changes that work with the residential neighbors. Ms. Scott noted that she was aware of it, but did not go and speak in favor of it even though she was. Ms. Scott feels that this plan is better than what has been brought forward twice in the past and that this is a residential neighborhood no matter how you cut it and it would be spot zoning to change just this portion to allow for this. Ms. Scott requested the zoning remain the way it is currently.

Chris Wall of 19 Commonwealth Ave., Lowell, MA came forward and explained that they purchased their home in July, 2015 and his first awareness of this was the notice he received for this meeting. Mr. Wall explained that they are concerned with this project and urged the Board not to change the zoning.

MOTION: Mr. Kutcher made the motion to withdraw Premier Storage Investors for AMC Realty Group, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed 96,800 sq. foot mini warehouse/self storage facility with appurtenant drives, parking, storm water and utility improvements as shown on plans filed with this Board. Said property is located at 395 Woburn Street, Assessor's Map 4, Lots 61

**and 62, zoned Westside Neighborhood Business District without prejudice;
seconded by Mr. Dunn and the motion 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: 1/28/16

Approval of Minutes – November 19, 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.
- 6:30 P.M. James Heider** for a variance from Section 4000, Para 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.

NEW HEARINGS

- 6:30 P.M. 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.
- *Application packet dated 11/27/15.*
- 6:30 P.M. Jason Barrett** for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to construct a second floor addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at **14 South Amos Street**, Assessor's Map 70, Lot 151, zoned Residential.
- *Application packet dated 11/25/15.*
- 6:30 P.M. James Heider** for a Special Permit from Section 3600, Para 3651 of the Tewksbury Zoning Bylaw to construct an addition onto a pre-existing non-conforming structure as shown on plans filed with this Board. Said property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.
- *Application packet dated 11/24/15.*
- 6:30 P.M. Premier Storage Investors** for AMC Realty Group, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed 96,800 sf mini warehouse/self storage facility with appurtenant drives, parking, stormwater and utility improvements as shown on plans filed with this Board. Said property is located at **395 Woburn Street**, Assessor's Map 4, Lots 61 and 62, zoned Westside Neighborhood Business District.
- *Application packet dated 11/23/15.*