



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
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Meeting Minutes

Tuesday, August 8, 2023

A public hearing was held on Tuesday, August 8, 2023, in-person and remotely, on the following application(s) at the time indicated:

Attending the meeting at 7:00 pm in-person and via Zoom, Wayland members were in attendance: Jim Grumbach (joined 7:05pm), Adam Hirsh, Doug Levine, Hunter Perry, Shaunt Sarian, Thomas White. Also in attendance: Mike Crisafulli (Building Commissioner), Manny Oliver (Building Department), Amy Kwesell (Town Counsel), and Robbie Bullard (IT Support). Audio and video recorded by WayCam. Absent: Chair Joshua Wernig, Aida Gennis.

Thomas White opens the meeting and reads the following:

One may watch or participate remotely with the meeting link that can be found at <https://www.wayland.ma.us/public-body-meeting-information-virtual-inperson-and-hybrid>

Pursuant to Chapter 2 of the Acts of 2023, this meeting will be conducted in person and via remote means, in accordance with applicable law. This meeting may be recorded which will be made available to the public on WayCAM as soon after the meeting as is practicable.

When required by law or allowed by the Chair, persons wishing to provide public comment or otherwise participate in the meeting, may do so by in person attendance (if allowed), or by accessing the meeting remotely, as noted above. We request public comment be limited to two minutes per person.

Everyone in attendance should be aware that face masks are now optional for Town Buildings according to the new Face-Covering Guidance dated February 24th, 2022. <https://www.wayland.ma.us/home/news/face-masks-optional-town-buildings>

Thomas White reviews the agenda and gives instructions to all present.

Mr. White announces that the Chair, Joshua Wernig, is unable to attend, and that therefore Mr. White will act as Chair for this meeting.

Mr. White then introduces a new ZBA Member, Hunter Perry.

Jim Grumbach announces that this will be his last meeting as a ZBA Member.

Public Comment:

None.

Review/Accept Minutes of June 13th, 2023:

Thomas White notes that the minutes of 6/13/2023 have not been received by all Members, so this item is tabled until the next meeting. Jim Grumbach says that he has proposed some revisions to these minutes; Members say that they will review these before the next meeting, as well.

Topics not reasonably anticipated by the Chair 48 hours in advance of the meeting, if any:

None.

Thomas White reads the legal description:

Application of **Atlas Contracting Inc (Attorney/Agent) on behalf of Richard & Nicole Gilbody (owner)**; to construct a first and second story addition with a garage addition on a pre-existing nonconforming lot which exceeds gross floor area by more than 20%. The property is located at **5 Lundy Lane** which is in the R-20 Zoning District. **Case #23-13.**

In attendance for the application are: Rick and Nicole Gilbody (homeowners), David Michael Johnson (architect), Ohan Ozcan (Atlas Contracting), and Jacob Gadbois (consultant).

Mr. Gilbody reviews the application. He highlights the letters of support from neighbors, and he says that they designed their home with an emphasis on staying

consistent with the character of the neighborhood. He says that they also designed to stay within setback requirements.

Mr. Ozcan takes over the presentation. He says that the reasons that they are in front of the ZBA are the preexisting nonconforming lot and that they are increasing floor area by over 200%. He emphasizes that the existing home is less than 1500 sq ft, with no garage, and that the percentage increase includes a garage. The addition will be mainly on the back of the house; the footprint will be expanded. He says that the existing structure has a second floor, and the addition will continue this second floor. The proposed will have a maximum height of 29 ft, well under the 35 ft limit. He reiterates that they will be staying within all setback requirements.

Questions from Members:

Doug Levine asks what the increase in floor area is without the garage. Mr. Gilbody says that the proposed will total 3605 sq ft without the garage.

Adam Hirsh asks if any trees will need to be removed. Mr. Ozcan says they will not; he says they will have to remove or relocate some previously installed landscaping like shrubs, but that trees will not be impacted.

Public Comment:

Sean Ryan, 14 Rich Valley Road, speaks in support of the project. He says he has been a neighbor of the applicants' for years, and he feels that the plans fit well into the neighborhood.

Thomas White notes that the application is very comprehensive and that the design seems careful and appropriate.

Thomas White constitutes a panel of himself, Jim Grumbach, Adam Hirsh, Doug Levine, and Shaunt Sarian.

Jim Grumbach moves to grant the special permit, based on the plans submitted, and subject to approval from all other necessary Town boards, and subject to a finding that it does not derogate from the neighborhood; Adam Hirsh seconds. Voted (5-0-0 by roll-call vote). Thomas White will write the decision.

Thomas White reads the legal description:

Application of **Henry Maclean (applicant) on behalf of Elizabeth Demers & Ralph Pahlmeyer (owner)**; to be granted a 2 bedroom in-law apartment (9.1.1.4) and construct a new 2 story barn. The property is located at **23b Bayfield Road** which is in the R-20 Zoning District. **Case #23-12.**

In attendance for the application is: Henry Maclean (representative).

Mr. Maclean reviews the application. He says that the applicants' request is actually a bit different from what has been recorded: they are now making a 2-part request, one for a permit for a new 2-story in-law apartment (per Section 9.1.1.4 of the bylaws), and another that will allow the family to remain in the existing house for the duration of construction. He says that the barn on site will be coming down, and that ultimately there will be two structures connected by a breezeway.

Thomas White expresses concern about whether the ZBA can hear the case at this meeting, as the case description in the meeting agenda is incomplete. Ms. Kwesell says that the risk of possible future litigation would fall on the applicant. After discussion, Members advise Mr. Maclean to withdraw the application and resubmit—having the application fee waived—in order to ensure no legal jeopardy for him.

There is discussion between Members, Town Counsel, and Mr. Crisafulli about what is in their purview, and what is in his. There is discussion of what is required for certificates of occupancy, utility connections and disconnections.

Mr. Maclean requests to withdraw the application.

Doug Levine moves to accept the withdrawal of the application, without prejudice; Adam Hirsh seconds. Voted (5-0-0 by roll-call vote).

Thomas White reads the legal description:

Application of **Mill Creek Residential Trust (applicant) on behalf of 297 BPR (Whole Foods) (owner)**; for a comprehensive permit for 172 rental units, 25% (43 units) of which shall be deed restricted as affordable. This property is located at **297 Boston Post Road** which is in the Business District B. **Case #23-14.**

In attendance for the application are: Debbie Burrows (counsel), Doug Archam (Mill Creek), Anand Bouchet (Mill Creek), and some unnamed team members.

Ms. Burrows requests a continuance. She says that their team have been working with the Town for over a year, but that they were not given sufficient notice of this

meeting, and therefore several members of her team were unavailable. She says they would like to have the full team in attendance for their presentation.

Town Counsel notes that the application is missing a Project Eligibility Letter (PEL), and that the applicants have been informed of this issue by the Building Commissioner. She adds that the application is missing evidence of fundability, apart from an undated letter saying that Eastern Bank would be “interested.” She cites bylaws Section 7.60.5401, 5605.2G, and CP3.1.7 Subsection 2, which all require a PEL to open an application. She says that the applicants demanded to open the application in spite of this, triggering a 30-day period within which the hearing must be opened, hence the inclusion of the case at this meeting.

Town Counsel recommends that there be no testimony taken, and that the ZBA procedurally deny the application without prejudice; the applicants can then resubmit when they have their PEL.

Ms. Burrows says that a land court case determined that a PEL is not a jurisdictional requirement, though it is the most typical way of demonstrating the necessary information. She says that they disagree that they have an incomplete application. She says that the lack of a date on a letter is not sufficient reason to deny the application.

There is discussion of the procedural issues. Jim Grumbach notes that, in his decades-long career as a lawyer, he has seen many undated letters excluded as evidence, for that reason.

Public Comment:

None.

Jim Grumbach moves to procedurally deny the application, without prejudice, on the ground that it is incomplete; Adam Hirsh seconds. Voted (6-0-0 by roll-call vote).

Thomas White reads the legal description:

Continued: Application of **Ilson Machado on behalf of Ramiro Millan (owner)**; to construct an addition on a pre-existing nonconforming lot in a nonconforming location. The property is located at **9 Simpson Road** which is in the R-20 Zoning District. **Case #23-10.** (Cont. 6.13.23, 7.11.23)

In attendance for the application is: Ilson Machado.

Mr. Machado updates on the application. He says they are requesting a continuance, as they do not have their updated plans finalized yet. Members are amendable to this.

Adam Hirsh moves to continue Case #23-10 until September 12, 2023, at 7:20 pm; Doug Levine seconds. Voted (6-0-0 by roll-call vote).

Thomas White reads the legal description:

Continued: Application of **Joshua Fox (attorney/agent) on behalf of Herb Chambers (owners)**; to create service bays for customer drop-off and additional storage. This property is located at **533 Boston Post Road** which is in the Limited Commercial Zoning District. **Case #23-01** (Continued 2.14.23, 3.21.23, 4.11.23, 5.30.23, 6.13.23, 7.11.23)

In attendance for the application is: Joshua Fox (attorney).

Jim Grumbach reminds all present that he has recused himself from this case.

There is discussion of which Members have been present for all substantive hearings on this case. It is determined that not enough Members are present at this meeting to take testimony, as Thomas White has not mullinized for the one meeting he missed. Mr. Fox requests a continuance until a quorum is present.

Doug Levine moves to continue Case #23-01 until September 12, 2023, at 7:25 pm; Adam Hirsh seconds. Voted (5-0-0 by roll-call vote).

Adjourn:

Doug Levine moves to adjourn the meeting; Adam Hirsh seconds. Voted (6-0-0 by roll-call vote).

Meeting adjourned at 8:15 pm.

Date Approved _____

Prepared By _____