



TOWN OF MEDFIELD

Office of the

BOARD OF APPEALS

TOWN HOUSE, 459 MAIN STREET
MEDFIELD, MASSACHUSETTS 02052-2009

(508) 359-3027
(508) 359- 6182 Fax

MEETING OF:
February 12, 2020
MINUTES

Members Present: John J. McNicholas, Chair; William McNiff, Member; Jared Spinelli, Associate Member; Charles Peck, Associate Member

Members Absent: Michael Whitcher, Member; Jared Gustafson, Associate Member

Staff Present: Sarah Raposa, Town Planner; Paul Haverty, 40B Consultant; Marion Bonoldi, Recording Clerk

Others Present: Thomas Curl, Michael Larkin, Stephanie Kiefer, Sarah Lemke, John Sharry, Caitlin E. Struble, Gary Pelletier, Kristine Trierweiler, Leslee Willitts

Location: Medfield Town House, 2nd floor meeting room

At approximately 7:00 pm, Chair Jack McNicholas called the meeting to order and announced the meeting is being recorded.

Chair McNicholas explained the process of the meeting. Chair McNicholas said the agenda will be taken out of order and start with the administrative tasks.

Administrative:

Decision Deliberation – 215 South Street (WM, CP, JS)

Mr. McNiff said he has reviewed the variance criteria and believes the application falls short of granting a variance. Mr. McNiff doesn't believe the property is unique from the other district properties and a hardship was not proven. Mr. McNiff believes the variance should be denied. Mr. Jared Spinelli agrees with Mr. McNiff and believes the variance should be denied without prejudice. Mr. McNiff explained that by denying without prejudice the applicant can resubmit the application without waiting two years. Mr. McNiff said if the applicant does choose to resubmit, he recommends the applicant retains legal counsel. Mr. Charles Peck said he agrees that the variance should be denied. Mr. Spinelli made a motion to deny the variance without prejudice. Seconded by Mr. Peck. The Vote: 3-0.

Minutes – January 8, 2020 (WM, JS, CP)

Mr. Spinelli made a motion to approve the minutes from January 8, 2020. Seconded by Mr. Peck. The Vote: 3-0.

John & Sharry (applicant/owners) seek a determination under MGL Chapter 40A §6 and a special permit under MGL Chapter 40A §9 and/or Medfield Zoning Bylaw §300-9.1.C.3 that the proposed work

consisting of the reconstruction and minor expansion of a portion of the existing historic carriage house containing three garage bays, two bays of unfinished storage space, and one-bedroom apartment will not be substantially more detrimental to the neighborhood than the existing nonconforming nature. The property is located at 139 Harding Street; Assessors' Map 72 Lot 061; RT Zoning District with no aquifer overlay.

Mr. Spinelli read the notice into record. Chair McNicholas explained the procedures of the hearing. Ms. Sarah Lemke, 172 Harding Street, presented for the applicant. Ms. Lemke said she is the Chair of the Medfield Planning Board however she is before the ZBA tonight in a personal capacity. The applicant is Ms. Lemke's brother-in-law and Ms. Lemke is also a real estate attorney. Ms. Lemke introduced Ms. Caitlin Struble of Winslow Designs as the architect on the project.

Ms. Lemke referenced the documents and plans provided for the Board. Ms. Lemke said there are two structures; one is a home and the other is a historic barn with one bedroom above. Ms. Lemke noted that above the barn has always been used as an apartment. The home dates to the early 1800's and the barn dates to the early 1900's. Ms. Lemke said the applicant's intent is to update the structures and have their in-laws move in. Ms. Lemke said the ceiling heights will be raised to meet code and all of the reconstruction will be kept within the allowed setbacks. Ms. Lemke said this is a lawful nonconforming, preexisting use. Ms. Lemke said there will be minimal expansion to allow the property to meet modern building codes. Ms. Lemke showed an assessor's record dated 1930 clarifying the multi-family use. Ms. Struble showed photos of the design intent to the Board. Ms. Struble said the reconstruction will not be detrimental to the neighborhood, the site is well buffered and the apartment use will be the same that it has been for 100 years. Ms. Struble said the 3-garage bays are staying and new doors will be added. Ms. Struble said the low head heights do not meet today's building codes and will be raised. Ms. Struble said the access to the garage through French doors doesn't meet today's building codes and will be changed. Ms. Struble said the outside stairs are currently outside of the setbacks and will be removed and reconstructed inside. Ms. Struble said there is adequate water, sewer and electrical at the site and no infrastructure will be changed. Chair McNicholas asked if the Board had any further questions. Mr. McNiff said he knew the previous owner and has been to the property. Mr. McNiff believes the plans presented will enhance the property. Mr. Spinelli said the presentation was very thorough and has no questions. There were no questions or comments from the audience. Chair McNicholas asked the Board if a site visit was necessary. Mr. McNiff and Mr. Spinelli said no.

At approximately 8:25 pm, Mr. McNiff made a motion to close the hearing. Seconded by Mr. Spinelli. The Vote: 3-0.

Comprehensive Permit Modification Request (per 760 CMR 56) Country Estates of Medfield, Hospital Road 40B – for approved floorplans

Chair McNicholas introduced Mr. Paul Haverty, 40B Consultant for the ZBA. Ms. Stephanie Kiefer, attorney for Mr. Larkin presented to the Board. Ms. Kiefer said her client Mr. Larkin is requesting a modification to the comprehensive permit due to an insubstantial change to the bathroom counts of the affordable units. The bathroom counts have been reduced in the 3-bedroom units from 2 ½ to 1 ½ baths and in the 4-bedroom units from 2 ½ to 2 baths. Ms. Kiefer said the comprehensive permit was issued in 2017 and between November 2017 and March 2018 occupancy permits were received and then a stop order was issued for the due to the possible violation. There are five more affordable units to be built. Ms. Kiefer said Mr. Larkin has had correspondence with the Building Commissioner and Mass Housing. The Building Commissioner recommended a ZBA modification to the comprehensive permit. Ms. Kiefer said bathroom counts are an insignificant or insubstantial

change. Ms. Kiefer said DHCD regulations provide what is an insubstantial change (floor area, bedroom counts, bathroom counts, exterior color, interior color, style of material) and substantial changes (building type, form of housing). Ms. Kiefer said nothing on the exterior has changed. Ms. Kiefer said the only changes are a full bath reduction in 3-bedroom units and a ½ bath reduction in 4-bedroom units. Chair McNicholas asked if the bathroom reductions only occurred in the affordable units. Mr. Larkin said yes; just in the 13 affordable units. Mr. Spinelli asked the intent of not applying the reduction across all units; both market rate and affordable. Mr. Larkin said the bathroom counts are within DHCD guidelines and the final plans were submitted to the Town and MassHousing. Mr. Larkin referenced the timeline provided to the Board. Ms. Kiefer said the final plans were approved by DHCD. Mr. Haverty asked if there is evidence that the plans were reviewed and approved by DHCD/MassHousing. Mr. Larkin said the information was broken down during the lottery process. Mr. Haverty said from a definition standpoint; he agrees that the bathroom count is insubstantial. Mr. Haverty said having the affordable units different from the market rate units is another issue. Mr. Haverty asked if there is any written record that MassHousing knowingly approved the difference between the affordable units and the market rate units. Mr. Haverty said evidence that MassHousing knew about the disparity between the affordable units and the market rate units is necessary for the Board to move forward. Mr. Haverty said the Board approved plans with no bathroom count difference between affordable and market rate units. Mr. Larkin said everything was reviewed by the Town. Ms. Sarah Raposa, Town Planner, said she would like clarification on the approval from MassHousing. Ms. Raposa asked if the approval was a letter dated September 15, 2017. Mr. Larkin said yes. Ms. Raposa said the permits were issued between November 2017 and March 2018 and asked if the final approval letter would have referenced the change to floorplans. Ms. Kiefer said the letter would not note the change. Ms. Raposa said the marketing materials the Town received and personally posted to the Town's website were different what was built. Mr. Larkin said that was a marketing error. Ms. Raposa said the errors were on-going over the timespan because the Board was not alerted to the change in plans.

Mr. Haverty said the information is in separate places and someone would have to piece it all together. Mr. Haverty said MassHousing only deals with affordable and wouldn't have known the affordable units were different from the market rate units. Mr. Haverty said if there is evidence shown that MassHousing knew of the disparity between affordable and market rate units and is okay with the difference; that would be helpful to the Board. Mr. Haverty said in order for the Board to sign off on the modification; they need to know the bathroom count change is known and meets the qualifications of MassHousing.

Mr. Spinelli asked Mr. Haverty if it is common to make modifications retroactively. Mr. Haverty said he would say modifications retroactively are rare but do happen. Modifications help correct the record. Chair McNicholas said the guidelines might claim bathroom counts are insubstantial but to the folks that got only one full bathroom; they probably feel differently. Chair McNicholas would like to know if Mass Housing approved the change and said the change was not originally presented to this Board.

Mr. Larkin said the final plans were sent to everyone; building permits were approved, occupancy permits were given. However, no one at the Town level said they noticed the change. Mr. Larkin said a bathroom count isn't substantial; he was approved for 2 ½ and built 1 ½. Mr. Haverty said the burden at this point is for the applicant to show evidence that MassHousing was aware of the change or not. Mr. Haverty said the applicant doesn't have anything for the Board and an email from MassHousing would suffice.

Chair McNicholas said the applicant is always before the Board due to misinterpretation or miscommunication. Chair McNicholas said all ZBA Board members are tired of Mr. Larkin appearing before the Board and want the project to be completed correctly. Mr. Haverty said it is not the Building Commissioner's responsibility to

go over the plans with a fine-tooth comb; that is putting too much on the Building Commissioner to expect him to do that.

Mr. Gary Pelletier, Building Commissioner said this project has also included his two predecessors and noted the eight occupancy permits for affordable units issued are in addition to the 18-market rate occupancy permits issued. Mr. Pelletier said that when a building commissioner is reviewing plans, they are examining code related issues and not generally bathroom counts. Mr. Pelletier said that when the bathroom count reduction was detected; he knew the applicant needed to come before the Board. Mr. Pelletier said he would consider a bathroom count reduction as a substantial change. Mr. Pelletier has seen no documentation that the bathroom reduction was requested by the applicant or approved. Chair McNicholas asked if the stop work order was still in effect. Mr. Pelletier said no; the stop order was in place until Mr. Larkin submitted documentation regarding the bathroom change. Mr. Pelletier said it took approximately two weeks to get the documentation. Mr. Pelletier said that when the applicant committed to come before the ZBA Board the work resumed however; no new permits will be issued. Mr. Haverty said a building commissioner's definition of substantial and insubstantial changes will differ from the Board.

Mr. McNiff said he has no further questions but is frustrated from the communication problems with this applicant. Mr. McNiff said all developers need to know that it is a privilege to develop in Medfield and hope the Board will continue to set that precedence going forward. Mr. McNiff said he is not comfortable making this decision for a modification. Mr. Spinelli said the applicant should have notified the Board of any change promptly. Chair McNicholas said the Board needs more information to approve the modification. Mr. Haverty noted this is not a public hearing and has a 20-day timeline. Mr. Haverty feels the applicant needs to extend the deadline. Mr. Haverty believes that if Mass Housing submits information stating they were aware the affordable units are different from the market units and they are okay with the disparity then the ZBA is without authority and would need to approve the modification.

Ms. Kiefer and Mr. Larkin verbally agreed to extend until Friday, March 13, 2020 and will be added to the agenda on March 12, 2020 with the ZBA. Applicant to submit extension request in writing to file with the Town Clerk.

Daoud Aboushousha, owner of 35 Sunset Way, said there has been two meetings with MassHousing. The owner said there are many issues with the affordable units and Mr. Mike Busby was at 35 Sunset yesterday and met with seven owners of affordable units. Mr. Busby assured the owners that MassHousing had no idea of the bathroom count changes. Mr. Aboushousha thanked the Board for their time.

Mr. Spinelli made a motion to continue the modification request until March 12, 2020 at 6:30 pm. Seconded by Mr. McNiff. The Vote: 3-0

At approximately 9:20 pm, Mr. Spinelli made a motion to adjourn the meeting. Seconded by Mr. McNiff. The Vote: 3-0.

Respectfully submitted,
Marion Bonoldi, Recording Clerk