

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 06, 2011**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Christopher Graham
Kendal Tripp
Kimberley A. Fernandes, Clerk
Donna Lambert, Alternate

Absent: William Wyatt, Alternate

Also Present: Ralph Souza, Building Inspector
Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

Executive Session – 6:00 PM

Motion made by Ms. Lambert to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to discuss strategy in respect to pending litigation. Second by Mr. Coutinho. The Board voted unanimously in favor.

Roll Call Vote: Ms. Lambert-aye. Mr. Coutinho-aye. Ms. Fernandes-aye. Mr. Graham-aye. Mr. Tripp-aye. Mr. Harrison-aye.

Mr. Harrison announced that the Board would return to Open Session following the Executive Session in order to continue with scheduled agenda.

Open Session – 6:38 PM

Excel Recycling, Inc. 37 Charlotte White Road

Chairman Harrison stated that Attorney Markey, representing Excel Recycling has asked for a continuance on a determination hearing.

Motion made by Mr. Graham to continue to April 20, 2011 at 7:00 PM. Second by Ms. Lambert. The Board voted unanimously in favor. Note: Attorney Feingold is in agreement with the continuation date.

Ron & Loretta Price, Nathaniel Bryant, Julia Ferguson, 363 Main Road

Motion made by Ms. Lambert to set Wednesday, June 8, 2011 to hear a request to modify the Cease & Desist Order issued to Excel Recycling, Inc. on 12/02/10 to prohibit the use of cranes or any other apparatus from loading open top trailers. Second by Ms. Fernandes. The Board voted unanimously in favor.

Raymond C. Green, 111 Huntington Avenue, Boston, MA seeks a variance for relief from Zoning Bylaw Article 13 – Inclusionary Housing of the Zoning Bylaws as originally adopted and amended; relief from Article 13 as adopted at the 2005 Annual

Town Meeting; and as amended at the 2010 Annual Town Meeting. The property is located on Sanford Road and shown on Assessor's Map 22, Lot 25.

Chairman Harrison called the hearing to order at 7:00 PM.

Sitting on petition: Clayton Harrison, Kendal Tripp, Christopher Graham, Kimberley Fernandes and Donna Lambert.

Attending were: Gerald Coutinho – not as a voting member
Attorney Ilana Quirk, Kopelman & Paige – Town Counsel
Attorney Brian Corey – representing petitioner
Building Inspector/Zoning Enforcement Officer Ralph Souza
Town Planner Sarah Raposa

Abutters present: Sara Lou Motta – 31 Tickle Road / Christopher Circle

Attorney Brian Corey stated the original permit was given to the prior owners, the Valtons, who had secured a private mortgage but were foreclosed upon and the project was abandoned. The new owner found ledge and large boulders on the property which cause the project to have costly overruns, including repairs to the roadway, new catch basins to be installed, etc. Attorney Corey stated the special permit was requested under the 2005 bylaw for Inclusionary Housing, Article 13. Article 13 at the 2010 Annual Town Meeting was deleted and replaced by Article 37.

Attorney Corey stated the new owners are not developers, they are lenders. Under the old bylaw, this project was to include affordable housing. After the new article was created, a covenant was received based on the old Article 13 and now the Planning Board is asking for a release of the old covenant. Attorney Corey stated Town Counsel has rendered a decision on this matter.

Attorney Corey stated he is present tonight on behalf of his clients asking for a variance of the special permit. This would not affect the local properties or their values. No harm will be done to the neighborhood and all the lots in this subdivision are standard sized lots. Mr. Coutinho asked if there were two affordable lots. Attorney Corey stated that lots 1 & 12 were affordable; all lots meet the standard subdivision requirements; under the inclusionary housing there is a provision for subdivisions of eight lots or more. There are provisions in the current inclusionary housing that the applicant has the options of doing, for example, if there are ten acres to be developed, those ten acres are donated, which is a financial burden. Attorney Quirk stated that is incentive based development that has happened in the last five years; this is a non-incentive based project because under Chapter 40b, the Town is required to have 10 percent affordable housing stock; as for inclusionary housing, it does not give incentives. Attorney Quirk stated there is incentive-based density bonuses and inclusionary housing without incentives. Attorney Corey stated there is no case law challenging this. Planning Boards are requesting concessions from developers and that is illegal; that is why inclusionary housing was created in order to help towns deal with Chapter 40b projects. Attorney Corey stated the Town is dealing with archaic bylaws, even though attempts are being made to correct them.

Attorney Corey stated the owners are way over their heads on this project; he believes the lots can be sold for \$96,000.00 and the lots can't be pre-sold based on the existing covenant.

Mr. Coutinho asked that if relief was granted, would there still be twelve lots with no affordable units. Mr. Graham asked if the conditions such as replacing the stone walls, etc could be put into place. Attorney Corey stated the conditions of replacing the stone walls and replacement of the survey markers were perfectly acceptable.

Town Planner Sarah Raposa stated she had no comment at this time; she was attending only to make observations.

Abutter Sara Lou Motta stated that boulders were taken away but the stonewall has not been replaced.

Former Planning Board member Wayne Sunderland stated that a re-recording of the covenant must be done due to an incorrect date.

Attorney Corey stated that due to the geography of the land, the ledge, boulders, etc, the construction costs, the drainage and the fact that the lot was not cleaned up totally, his clients were asking for the variance relief. Attorney Corey stated that prior to the construction, there was no indication of any ledge on the property. Attorney Quirk stated this could be seen as an amendment but the variance should meet the guidelines of a variance.

Building Inspector/Zoning Enforcement Officer Ralph Souza stated there were issues with trees being cut down and excessive noise on Sundays.

Chairman Harrison called for any more input; seeing none, he requested a motion to close the hearing for discussion. No more input would be taken, except for clarification purposes.

Motion made by Ms. Fernandes to close the hearing. Second by Mr. Graham. The Board voted unanimously in favor.

Vote Taken

Motion made by Mr. Graham to grant the variance for specific relief sought from Article 13 of the bylaws as originally adopted with any other relief not being granted; hardship being shown as unforeseeable bedrock and underlying ledge making project unfundable and Zoning Bylaw Article 13 being deficit and amended at Town Meeting; no new lots are to be added to the project or any change in lot size; as amended with the following conditions: any previous stone walls to be reestablished and boundary markers to be re-established before any other work commences onsite. No lot releases shall be issued for lots within the Sarah Ann Ivy Estates subdivision until the owner replaces the survey bounds and stonewall along the property line of Map 19, Lot 18 owned by Sara Lou Motta and Richard Carvalho; and to re-survey the entrance to the subdivision and replace

the bounds and wall as necessary at the Christopher Circle property of David Aguiar. Second by Ms. Fernandes. The Board voted unanimously in favor.
The hearing is closed at 7:40 PM.

Consider

1. **Motion** made by Mr. Graham to set Wednesday, May 4, 2011 at 7:00 PM to hear two petitions from Westport Market/Salibi Realty II, LLC for a Finding and a Variance. Second by Ms. Fernandes. The Board voted unanimously in favor.

Correspondence

1. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of October 27, 2010. Second by Mr. Graham. The Board voted unanimously in favor.
2. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of November 3, 2010. Second by Mr. Graham. The Board voted unanimously in favor.
3. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of December 01, 2010. Second by Ms. Fernandes. The Board voted unanimously in favor.
4. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of December 17, 2010. Second by Ms. Fernandes. The Board voted unanimously in favor.
5. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of January 19, 2011. Second by Ms. Fernandes. The Board voted unanimously in favor.

Executive Session – 8:10 PM

Motion made by Mr. Graham to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to approve Executive Session Minutes. Second by Ms. Fernandes. The Board voted unanimously in favor.

Roll Call Vote: Mr. Graham-aye. Mr. Harrison-aye. Mr. Coutinho-aye. Ms. Fernandes-aye. Ms. Lambert-aye. Mr. Tripp-aye.

Mr. Harrison announced the Board would return to Open Session in order to adjourn.

Open Session – 8:12 PM

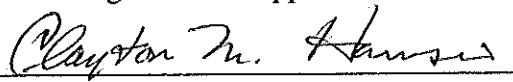
Motion made by Mr. Graham to adjourn the Zoning Board of Appeals meeting. Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED: 
Clayton M. Harrison, Chairman