

**Zoning Board of Appeals Minutes
March 14, 2018**

Attendees:

Present: Anthony Aveni, Chairman; Gerry Chipman, Member; Brian Heath, Member; Michael Mainvielle, Member; and Anna Klimas, Associate Member

490 and 484/486 Main Street – Appeal of Building Inspector's Decision

Mr. Anthony Aveni read the public hearing notice into the record, it stated the following: The Zoning Board of Appeals will hold a Public Hearing on March 14, 2018 at 7:00pm on the second floor of the Municipal Office Building located at 66 Central Square, Bridgewater, MA to review an application filed by Lawrence P. Silva, Representative, 1615 Bedford Street, Bridgewater, MA 02324. Applicant seeks to appeal the Building Inspector's decision under Section 11.21 of the Bridgewater Zoning Bylaws. Applicant proposes land swap to terminate driveway access. Equal area swap will alter frontage. Said property is owned by A American Investments, LLC, 85 Plymouth Street and Alfred Danksewicz, 121 Greenbrier Lane, Bridgewater MA, and is located at 490 Main Street and 484/486 Main Street as shown on Assessor's Map 101, Parcel 136 & 137. Area is Residential D. The abutter's listing is public record, therefore, Gerald Chipman, Member, motioned to waive the reading of the abutters list and Brian Heath, Member, second the motion. The vote was unanimous.

A letter dated January 25, 2018 from Steven R. Solari, Building Commissioner/Zoning Enforcement Officer, to Mr. Larry Silva, Silva Engineering, 1615 Bedford Street, Bridgewater, MA was reviewed by the Board and read into the record. It stated the following: *"I have reviewed the proposed land swap as shown on plans submitted for 490 Main Street & 484/486 Main Street. I do not have an issue with the equal land swap. The zoning problem is the reduction of frontage of 484/486 Main Street. 484/486 Main Street is a legal nonconforming residential use. The existing frontage is 109.54 feet; you are proposing to reduce it to 94.14 ft. M.G.L. 40A Chapter 6 states: Pre-existing nonconforming structures or uses may be extended or altered, provided that no such change, extension or alteration shall be substantially more detrimental than the existing nonconforming use to the neighborhood. I am denying your request for land swap because of the reduction of frontage based on M.G.L. 40A section 6. You have the right to appeal my decision to the Zoning Board of Appeals. If you have any questions, please contact my office."*

A letter dated March 14, 2018 from Azu Etoniru, Town Engineer, to the Zoning Board of Appeals reviewed by the Board and read into the record. It stated the following: *"This office has reviewed the variance petition of A American Investments, LLC and Alfred Danksewicz for a variance under Section 11.21 of the Town's Zoning Bylaws. The petitioners are appealing the decision of the Building Inspector/Zoning Enforcement Officer which denied their application for a land swap (see a January 25, 2018 letter from the Building Inspector to Mr. Lawrence Silva). M.G.L. Ch. 40A, Section 6 provides bases for allowing and maintaining pre-existing non-conforming structures or uses: such as altering or enlarging an existing structure, so long as "...where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure" and "such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood". **This provision does not apply to changes to a nonconforming land shape and space; the subject application seeks to reduce the frontage of a nonconforming land, the argument for the equivalency of the land swap notwithstanding!** Additionally, the petition does not enjoy nor is it supported by the single lot exemption clause. The issue before the Board is not whether a free standing nonconforming lot may be built on, in which case the Board may find that owing to topography, soils, shape and hardship on the land a variance or special permit to allow construction may be in order. The instant application is seeking a variance for land swap for the purposes of terminating an existing access easement, which is not a basis supported or allowed by M.G.L. Ch. 40A, especially where such variance would further diminish the already nonconforming frontage! Furthermore, a grant of such variance would still require the applicant to file for definitive subdivision approval with the Planning Board under M.G.L. Ch. 41L for frontage waiver. Granting the requested variance may seem innocuous but it could unwittingly establish a precarious precedence and a floodgate for people seeking variances to create subdivisions with lots lacking the requisite frontage under the applicable zoning district, thereby derogating from the intent of the bylaws. Please do not hesitate to contact this office should you have any questions or require additional information."*

Mr. Larry Silva, from Silva Engineering, representing the applicant made a presentation to the Board arguing that the applicant was seeking a variance, and not a special permit, as the Building Inspector indicated. Mr. Silva noted that in Mr. Etoniru's letter it did state that a variance could be granted, but he wasn't recommending it. Mr. Silva explained that the applicant was seeking to eliminate the need of the existing easement so the lots are not dependent upon one another in terms of future ownership. Mr. Silva submitted a letter asking for a continuance. Mr. Silva stated at the time of the continued hearing he would provide a plan that shows how both driveways will function separately to supplement the filing. A letter dated March 14, 2018 from Rebecca Baptista to the Zoning Board of Appeals requesting a continuance was reviewed by the Board. There were no comments from the public.

Mr. Gerald Chipman, Member, made a motion to accept the applicant's request to continue the hearing to April 11, 2018 at 7pm. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed.

Zoning Board of Appeals Business

Review of Minor Modification Request for Residence at Lakeshore aka AXIS

A letter dated March 14, 2018 from Azu Etoniru, Town Engineer, to the Zoning Board of Appeals reviewed by the Board and read into the record. It stated the following: *"In connection with the above-referenced Comprehensive Permit dated April 16, 2013 issued pursuant to M.G.L. Chapter 40B, Sections 20 to 23, as modified ("the Comprehensive Permit"), and on behalf of my client, Claremont Bridgewater II LLC, I am hereby requesting that the Bridgewater Zoning Board of Appeals (the "Board") approve the construction of six (6) new garage buildings as an insubstantial change under the Chapter 40B Regulations, as discussed below: The proposed garages are shown on the following plans (copies submitted herewith): 1) Site Plan entitled "Axis at Lakeshore Proposed Garages" dated 10/24/17 prepared by Silva Engineering Associates, P.C.; and 2) Building Plans dated 12/01/17 prepared by South Coast & Associates Inc. ("Cover" sheet, sheet "A.2", sheet "A.1" and sheet "A.3"). We believe that the addition of these garages constitutes an insubstantial change under the Chapter 40B Regulations and request that you approve this modification as such. This request is being made pursuant to 760 CMR 56.05(11)(a). Pursuant to these regulations, the Board shall determine within twenty (20) days whether these requests are substantial or insubstantial in accordance with 760 CMR 56.05(11) (c) and (d). If it is determined that they are insubstantial, or if notice is not provided to the applicant to the contrary within such twenty (20) day period, the Comprehensive Permit shall be deemed modified to incorporate the change. The above process does not require a public hearing. A public hearing would be required if you determine that the change is a substantial change, and if so, and pursuant to the aforesaid regulations, a public hearing is to be held within thirty (30) days. Should you have any questions, please feel free to contact me. Thank you."*

Mr. Peter Freeman, Freeman Law Group, the proposed change would have a minimal effect on the neighborhood and residences and will add 21 residential parking spaces to the development. Mr. Freeman stated that it would require the strike of condition number 42 from the original decision. Mr. Freeman reviewed the minor versus major modification guidelines under 40B regulations with the Board.

Mr. Silva explained the location of the garages and the proposed use, that each garage spot would technically be two spaces, one inside the garage and one parking spot directly in front of it. Mr. Aveni stated that it appears the slope and grading will change with the construction of the garages. Mr. Silva stated that the walls of the garage become retaining walls around the perimeter so that there is no change in grade on the back side. Mr. Aveni stated that he was concerned and would like to have Nitsch Engineering take a look at the plan. Mr. Aveni stated that he is comfortable that it is a minor change but would like reassurance that this change would no impact the overall design of the project. Nitsch should take a look and see if there are any other recommendations or changes and determine if any further changes would be required or if there would be any impact to the overall design or drainage the way it is currently designed. Mr. Freeman along with the applicant agreed that Nitsch Engineering perform a peer review on the proposed change. Mr. Freeman stated that they would provide a letter to the office extending the time the Board has to act on the modification request.

Mr. Aveni stated that the office reached out to Nitsch in advance of the meeting to obtain a cost for the review, and the fee would be \$3,500. Mr. Freeman discussed it with the applicant and Claremont agreed to the cost of the review.

Mr. Gerald Chipman, Member, made a motion to accept the applicant's request to continue the hearing to April 11, 2018 at 7:15pm pending Nitsch's review. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed.

Review of Scrivener's Error on 0 Plymouth Street, Map 24, Parcel 50 and 51 Decision Letter

The Board reviewed the scrivener's errors in the January 31, 2017 decision letter for 0 Plymouth Street, Map 24, Parcel 50 and 51 whereby the first paragraph of the decision letter states "variance" and should say "use variance, and on the second page, the vote stated that it was the approval "a special permit", when it should have stated it was the approval for a "use variance".

Mr. Brian Heath, Member, made a motion to correct the scrivener's error in subject line of the decision letter, where it states "variance", the record should reflect "use variance", and on the third page in the second paragraph is replacing "special permit under section 5.10 and 6.30.A.4 of the Bridgewater zoning bylaws" will be replaced with "use variance, under the section 6.30.A.4 of the Bridgewater zoning bylaws". Mr. Gerald Chipman, Member, seconded the motion. VOTE: All in favor, none opposed.

Ms. Jane Brown stated that the vote administratively corrects the errors in the original decision letter. A letter will be attached to the original decision letter that will state that the decision letter is a reiteration and correction relative to the scrivener error and any previous deadlines are not affected, indicating the vote of the Board.

Mr. Tony Aveni, for the record stated that the use variance has expired. Mr. Larry Silva stated that the applicant has started work. Mr. Tony Aveni informed Mr. Silva that the purpose of the discussion is strictly to fix the scrivener's error to reflect the proper vote of the Board at that time.

Mr. Gerald Chipman, Member, made a motion to adjourn the regular meeting at 7:38pm. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed. Chairman Anthony Aveni closed the meeting. Next Zoning Board of Appeals meeting will be held on March 28, 2018 at 7:00pm in the Council Chambers located on the second floor of the Municipal Office Building, 66 Central Square, Bridgewater.

Respectfully submitted,



Jane K. Brown
Administrative Assistant