

ZONING BOARD OF APPEALS HEARING
Police Station Community Meeting Room, 34 Williams Street
Tuesday – November 17, 2009 – 7:30 pm

Present: Board Chairman David Lavenburg, Members Stephen Bennett, Ellen Freyman, Daniel Plotkin, Russ Preston, Jim Ryan and Mark Sirulnik.

Chairman Lavenburg opened the hearing at 7:34 p.m.

Old Business:

Petition #2009-25; Lot #61 Wild Grove Lane; Witoslaw; appeal of the Building Commissioner's denial for a building permit. Attorney Robert Santaniello spoke on behalf of the applicant and addressed the Papalia case law decision from 1966 submitted by Attorney Richard Goldman, attorney for abutter Fran Bogdanowicz of 234 Deep Woods Drive. Attorney Santaniello noted the Papalia decision references section 11 and not section 9 of the MGL 40A and that it speaks to "good faith" and does not reference a "good cause" issue which is what is before the Board today. Attorney Santaniello stated there is virtually no case law that establishes what "good cause" should be, nor does the law define it, leaving the interpretation to the Zoning Board. The one case that most closely addresses the issue is a 1993 decision, Bernstein v. Chief Building Inspector. In this case "good cause" was established due to a dramatic decline in the economy. The applicant believes his affidavit, submitted at last month's hearing, shows greater hardship and does satisfy the burden of good cause.

Chairman Lavenburg re-opened the public comment portion of the hearing, continued from last month. Attorney Richard Goldman, speaking on behalf of abutter Fran Bogdanowicz, agreed there is little case law for this matter. He does believe the Papalia case is on point and that the by-law allowing an exception to the two-year expiration was never intended to allow a lapse of time as great as eleven years. Abutter Fran Bogdanowicz expressed his frustration with the applicant's sudden desire to build on a lot that has been vacant for so long.

Chairman Lavenburg reminded the public that the special permit has already been granted. The matter being heard today relates only to the denial of the building permit on the grounds the special permit has lapsed, based on MGL 40A, Section 9 that a special permit shall expire after two years, except for good cause. Chairman Lavenburg asked the public to keep comments to the issue of "good cause" only. As there was no further public comment, Chairman Lavenburg closed the public comment portion of the hearing. Chairman Lavenburg moved that the Board define "good cause" as something that is in the best interest of justice and that it is case specific. The motion was seconded by Member Mark Sirulnik. A vote was called and Members Lavenburg, Bennett, Plotkin and Sirulnik voted in favor of the motion. Next Chairman Lavenburg made a motion that the Board find that in the context of the facts in this case the interests of justice can be served by perpetuating the intent of the original special permit issued for Mr. Witoslaw to develop his property, and the compelling reasons are articulated in Mr. Witoslaw's affidavit. The motion was seconded by Member Dan Plotkin. A vote was called and Members Lavenburg, Bennett, Plotkin and Sirulnik voted in favor of the motion. Chairman Lavenburg made a motion that based on the prior findings, the denial of a building permit on July 31, 2009 by Building Commissioner Mark Denver be reversed and a building permit be issued. The motion was seconded by

Member Stephen Bennett. A vote was called and Members Lavenburg, Bennett, Plotkin and Sirulnik voted in favor of the motion, allowing issuance of a building permit.

Petition #2009-18; 669 Shaker Road – LaPorte; application for a variance for fencing. Board Member Mark Sirulnik made a motion that the Board continue the matter to the December 15, 2009 hearing. Board Member James Ryan seconded the motion. A vote was called and Members Lavenburg, Freyman, Plotkin, Preston and Ryan voted in favor of the motion, continuing the matter to December 15, 2009.

Petition #2009-19; 69 Longfellow Drive - Michael and Mary Sitaras; application for a variance. The applicant has withdrawn his application. Member Daniel Plotkin made a motion that the Board accept the applicant's withdrawal without prejudice. Board Member Russ Preston seconded the motion. A vote was called and Members Lavenburg, Freyman, Plotkin, Preston and Ryan voted in favor of the motion.

Petition #2009-22; 187 Longmeadow St. – Brulport; request a special permit be granted for use of home for a "Bed and Breakfast". The applicant has withdrawn her application. Member Daniel Plotkin made a motion that the Board accept the applicant's withdrawal without prejudice. Board Member Russ Preston seconded the motion. A vote was called and Members Lavenburg, Freyman, Plotkin, Preston and Ryan voted in favor of the motion.

Petition #2009-28; 386 Bliss Road - Albano; request for special permit to demolish and rebuild new dwelling. Mr. Albano submitted additional plans showing dimensions and distances to lot lines. Chairman Lavenburg opened the hearing to public comment. Linda Schnaper of 33 Oakwood Drive asked only about what days and hours construction would occur and was told the Zoning Board does not have jurisdiction over such matters. Board Member Ellen Freyman made a motion that the Board find that per the proposed plans, the proposed structures would not be more intensive than the existing structures to be razed, noting the plans should be revised to reflect a patio in place of a deck as shown on the submitted plans. Board Member Mark Sirulnik seconded the motion. A vote was called and Members Lavenburg, Bennett, Freyman, Plotkin and Sirulnik voted in favor of the motion, granting the special permit.

Board Members Ellen Freyman and Daniel Plotkin left the hearing at 9:03 pm.

New Business:

Petition #2009-31; 74 Dunn Rd. – Regan; request for special permit for addition on dwelling located in Flood Plain. The Board expressed concern that the plans submitted do not reflect specific dimensions and distances from property lines as requested in the Town of Longmeadow Permitting Guidebook. Chairman Lavenburg opened the hearing to public comments. No one from the public spoke for or against the application. Chairman Lavenburg stated he is leaving the hearing open for public comment at the next hearing. Member Jim Ryan made a motion to continue the matter to December 15, 2009. Member Russ Preston seconded the motion. A vote was called and Members Lavenburg, Bennett, Preston, Ryan and Sirulnik voted in favor of the motion, continuing the matter.

Petition #2009-32; 93 Wheelmeadow Dr. – Goldberg; request for special permit for addition to dwelling. The applicant would like to enclose a rear porch. Chairman Lavenburg opened the hearing to public comments. As no one from the public spoke for

or against the application, Chairman Lavenburg closed the hearing to public comment. Member Mark Sirulnik made a motion the Board make a finding that the proposed addition to the southwest corner of the dwelling will not affect the existing non-conformities which are frontage and west setback. Member Russ Preston seconded the motion. A vote was called and Members Lavenburg, Bennett, Preston, Ryan and Sirulnik voted in favor of the motion, granting the special permit.

The hearing adjourned at 9:25 p.m.

Respectfully submitted,
Elayne Ayan

Approved by Chairman Dave Lavenburg 11/18/09