

Boxborough Board of Appeals
Meeting Minutes
Town Hall
September 27, 2016

Members present: Stefano Caprara, Tom Gorman (Chair), Kristin Hilberg, Michael Toups, and Lonnie Weil.

Member absent: Mark White

Also present: Adam Duchesneau, Town Planner
Gerry Noel, Inspector of Buildings and Code Enforcement Officer

Tom called the meeting to order at 7:20 pm.

Upon motion duly made by Michael and seconded by Lonnie, it was unanimously voted to accept the minutes for the meeting of September 13, 2016.

At 7:30 Tom opened the hearing for the Larry White Appeal of the Building Inspector's Decisions dated July 27, 2016. Tom read the legal notice into the record and explained the process to be followed regarding presentation, questions, and answers.

Larry White presented his appeal regarding Zoning Bylaw section 6200. He believes the decision to allow parking at 1034 / 1102 Mass Ave as a pre-existing, non-conforming use is in error and should be overturned. He also believes parking is less than 50' from Mass Avenue, in the wetland buffer zone, and doesn't have screening – all in violation of the zoning bylaw.

Larry used Google Maps to show the location of the property lines and how he believes the change in use from landscaping to stone block cutting is also in violation on the Zoning Bylaw. He believes the business is non-conforming for multiple reasons and at the very least Lawn Barber should not be allowed to create any parking lot. If it is allowed, they should be mandated to follow all zoning laws as well as screen the parking lot and business from Mass Ave. and the abutters.

Larry also maintains the initial building was built without a permit and then continued to expand without any oversight or permits from the town.

Building Inspector, Gerry Noel, stands by his decision as stated in his letter dated Aug. 10, 2016 to allow the parking based on other parking areas in use up and down Mass Ave.

Atty. Lou Levine, representing Lawn Barber, distributed a memorandum in opposition to this appeal. He agreed that the stone cutting business started in the last year has caused all of the problems between his client and Larry White. He noted that bylaw changes, for example allowing residential driveways to cross commercial land into residential areas and the subsequent construction of homes in close proximity to commercial businesses, have resulted in these types of disputes. He offered the opinion that changes in the building department personnel resulted in problems of interpretation of the bylaw due to different styles of management of the permitting process. Additionally, he believes Larry White's request was not timely so he doesn't have the right to appeal.

Kristin inquired about the 30 day appeal process and Adam relayed his discussion with town counsel affirming the timeframe was met.

Atty. Levine asserted that parking doesn't adversely affect Larry and screening is not required. He offered that Lawn Barber is willing to cease the stone cutting business at the end of 2016 and revert to being solely a landscaping operation at this site. The building would be used for storage. Lawn Barber will comply with the Planning Board requirements, including screening the parking lot. He distributed a Special Permit issued in 2006 showing the building built without a permit. It will be brought into compliance. Atty. Levine asserted that all of this was caused by a noise complaint and all problems would be solved by his client's proposed solution of termination of the stone cutting operation.

Tom questioned the distinction of land ownership and Atty. Levine replied that Lawn Barber has been renting from the Smith's. Tom then asked the public for questions and / or comments.

Kathy Vorce stated she had attended most of the Planning Board meetings for this site and understood the building inspector's determination was an opinion. She commented that the photos used in the parking determination showed there were no cars there. She felt Gerry used lack of vegetation and evidence of erosion as his reasons, not evidence of actual cars on the property. She felt that the use of the property is not in the spirit of what the town would allow and that stone cutting and monument works is not allowed. Additionally, she felt the operation was hazardous with odors, noise, and discharge.

Stefano asked Gerry if lack of vegetation predicated his opinion. Gerry replied yes. He also had spoken to other residents with institutional memory. They stated the area had been used for bus and car parking in the past. Stefano asked if he has used aerial photos and / or testimonials. Gerry restated the area had no vegetation and that was his justification.

Stefano asked about the difference between the area being barren and therefore the landscaping allows parking vs the actual use that was occurring. Gerry reiterated lack of vegetation. Lonnie read Mass General Law specifying that the land owner must demonstrate and prove use as pre-existing and non-conforming, not the complainant. If, prior to Lawn Barber using the location for parking, the location wasn't used for parking for two years then the pre-existing, non-conforming use is not viable.

Robert Smith, property owner, stated the land has been in the family since 1926. He rented the area to Lawn Barber and it was gravel for years. Grass overgrew the area and it was mowed. It was also used as a trailer turn-around. He isn't speaking for or against parking, but feels parking isn't a big deal. He plans to neaten up the charity bins and clean up the pond.

Pascale Belin-White stated there had never been problems with the parking or noise prior to the stone cutting. She believes allowing parking 15 cars makes an otherwise pretty corridor into an eye sore. She feels delivery of the rock creates noise and almost earthquake-like conditions.

France Nolde reasserted the ugliness factor. She asked if there would be fewer cars if there was no stone cutting.

Larry rebutted some of the prior statements. He felt the lack of vegetation should not have been used as a reason for allowing parking. Lawn Barber should have been forced to prove it had justification of parking. He felt allowing additional parking was equal to allowing the expansion of the business. He also inquired about Board of Health requirements.

Larry asked what proof Atty. Levine would provide to show Lawn Barber would really stop the stone cutting. While he would be happy with the return to peacefulness, he doesn't believe it would happen.

Stefano inquired why that would be relevant.

Atty. Levine noted that next week's hearing would include a request for a Special Permit that could restrict the use of the site and building.

Larry offered that the 2006 Special Permit means nothing. Everything has been done backwards. First they built, and then they were permitted, and then they changed the use of the site without approval. He noted that the expansion of the parking meant an expansion in the business and it seems this was also done backwards. The charity bins on the Smith's property earn them revenue. Larry believes they also need permits and there are none.

Tom questioned Atty. Levine about the amount of parking if the stone cutting was eliminated. Atty. Levine replied that there was still a need for parking for the landscaping business. The current application is for 9 – 13 spaces but the amount for solely landscaping business has yet to be determined.

Adam reminded the Board that this hearing is for an Appeal of the Building Inspector's Decision. The determination should be based on the staff report and not the rest of the discussion.

Tom stated that much of the discussion tonight has not been truly relevant but does have an impact on the decision. He recommends that the Board gather more information. Atty. Levine suggested not closing the hearing. Stefano agreed, having the option to gather more information and not force a decision tonight.

Larry noted he wants the opportunity to discuss the other violations in his application that haven't been addressed yet, such as noise pollution and adequate screening for abutters.

Steve Phaneuf, Lawn Barber owner, commented on actions that Larry took on his own land. Atty. Levine suggested a solution has been offered that would solve 95% of the problems and continuing down a rat hole wouldn't be productive.

Tom stated there was no further benefit to any more discussion tonight and he preferred to continue the hearing.

Larry agreed. He does not want to close the hearing and wants to go thru the remainder of his appeal.

Motion was made by Tom, seconded by Stefano and unanimously voted to continue the hearing to Oct. 4, 2016. Adam pointed out that the agenda for that meeting already has 3 hearings. Motion was made by Tom, seconded by Stefano and voted unanimously to amend the previous motion and continue the hearing on Oct. 18, 2016 at 7:40 pm.

Motion was made by Tom, seconded by Michael and unanimously voted to adjourn at 9:20 pm.

On behalf of the Zoning Board of Appeals,


Approved

11/15/16
Date