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To Town Clerk

**MINUTES OF THE MEETING OF THE BOARD OF APPEALS
BURLINGTON, MA
February 16, 2021**

Chairman Michael Murray called the meeting of the Burlington Board of Appeals to order at 7:30 p.m. The meeting was held Via Cisco Webex Link and on the bcattv Facebook page. The voting will be conducted by roll call.

Present: Chairman: Michael Murray, Jr., Charles Viveiros, Mark Burke, John Sullivan , Jim Sheridan, Adam Tigges and Joe Currier

Absent: none

Continued Hearing

20-21

35 Mountain Rd

The petition of Winn View Heights II, LLC for property located at 35 Mountain Road, Burlington, MA 01803, shown on the Burlington Assessor's records as the following Book-Page# 12319-229 Map and Parcel reference: 49-82-0. The applicant is seeking a Comprehensive Permit through the Massachusetts Local Initiative Program (LIP) pursuant to MGL ch. 40B, Section 21. The proposal is to construct a single building containing 24 condominium units and all units will be age (55+) restricted. All the units will have 2 bedrooms and 2 bathrooms. Six of the 24 units will be reserved for households' earnings up to 80% of the median income.

Legal notice previously read into record.

Chairman Murray Jr presented an update on the project stating tonight's meeting will consist of the architectural and site layout. He pointed out we are still waiting for additional information. He stated the Board received a proposal from Hancock Associates for a peer review, and the applicant has agreed to the proposal. Also received is a letter of legal opinion regarding the easement. He added the Board needs to be keep in mind the 180-day period and will probably need to request and extension.

Town Council, Lisa Mead commented on the easement letter, and stated there will be a need to file an amendment to the easement. It is the Board's role to decide on the access to property. Attorney Thomas Murphy reintroduced himself and stated he had the Architect, surveyor and the applicant available to present and answer any questions. He stated additional information was uploaded on to the website (20-21) He reported the applicant agreed with the peer review proposal from Hancock Associates, and the need for an extension of the 180-day deadline. He added he has received a legal opinion on the easement across Winn View I properties but is waiting for the Richardson Road opinion.

Chris Mello, from Eastern Land Survey Associates provided an overview of the property location and explained where the utilities would be placed, storm water, sewer and water. He explained the plans for parking under the building and the additional spaces.

Mr. Viveiros asked for clarification on the utilities and was informed the would be coming in from Richardson Road. In front of unit 30 there is a manhole for sewage and water will extend to the building on the opposite of driveway.

Mr. Sullivan asked for clarification on the parking and was told. There are 24 spaces under the building with an additional 34 exterior spaces.

Alan Popkin, from AHP Architects added there would be 26 spaces plus a couple of handicap spaces. 1 space for each unit. He described the materials that would be used on the building. He detailed the units, the floor levels, the different heights and the facade of the building. He explained there would be a flat roof, therefore stormwater will be gathered internally.

Mr. Viveiros asked if the Board would be hearing from other Boards, such as Conservation. Mr. Murray responded that once additional information has been received, they will be making their comments.

Mr. Burke wanted to know the status on the traffic study. Attorney Murphy stated his client still has not hired any one to complete a traffic assessment, they were waiting for the peer review and then they will get a traffic consultant that can address the concerns.

Mr. Murray commented this is a modified 40B and there is a list of waivers the applicant is requesting. He stated he would like additional information showing how they are not meeting the requirements. He added Ms. Kassner from Planning, wanted to see all regulations throughout the town, not just for zoning. He also would like to see a timeframe for filing a modification of the easement. Attorney Murphy stated he is expecting to receive information within the next few weeks, and he will share as soon as he receives it.

Mr. Murray questioned if the 40B was approved, if it would be separate from Winn Heights I and was informed it is a separate project and association. They are different owners.

Hearing open to the public.

Oleg Mikhalsky from 38 Mountain Road asked if the Board had the duty to uphold the interest of the town and how this project is going to benefit the town and would like the applicant to provide that information.

Mr. Murray stated the project would increase housing which is an issue throughout the state. Mr. Mikhalsky stated it does not sound like a benefit because the town is already at its threshold. He wanted to know if the town would receive an increase of tax money from the project. He added all he could see was an increase in traffic and congestion and would request the applicant provide the benefits for the town.

Mr. Murray stated the concerns will be discussed.

Matthew Gaines introduced himself as the attorney representing Winn Heights I and disagrees with the legal opinion on the easement. He mentioned the 2003 easement does not mention the utilities, it is a limited easement. He continued by reemphasizing the safety concerns of the neighbors. He also commented the neighbors are not making anything on this deal but must deal with all the burdens, while the current owners of the property will be making 1.42 million dollars and will not be affected.

Attorney Murphy responded the easement concerns will be addressed.

Diane Downs from 12 Richardson Road stated she owns part of the easement and believes it is going to be a burden.

Anthony Cintron from 24 Richardson Road wanted to know if there would be a final vote tonight and was informed no, that there would be several more meetings.

Martin Collins from 25 Richardson stated he does not see the benefit of this project, especially with the traffic concerns of the road being very narrow and 1 lane with the snow and trash.

Public hearing to remain open.

Motion made and seconded to approve Hancock Associate to complete a peer review. 5-0 in favor

Motion made and seconded to continue the hearing until March 16th 5-0 in favor.

Continued Hearing

20-24

3 Forbes Ave

The petition of Sunil Prajapati located at 3 Forbes Ave, Burlington, MA 01803, shown on the Burlington Assessor's records as Map and Parcel reference: 23-253. The applicant is seeking to change the description of work approved under building permit #39607(issued October 18,

2017) for constructing a main dwelling (26'-6" x 64'-0") and to use / convert the existing dwelling to an in-Law Area, to construct a main dwelling and converting the existing to an Accessory Apartment. Denial is due to Section 11.2.0, Article 11, section 11.2.2, 11.2.2b, 11.2.2.1(5). Accessory Residential uses in one-family Dwellings: Accessory Apartments Documentation in support of this proposal is available for public inspection as shown on plans filed with the Zoning Board of Appeals a copy of which is on file with the Town Clerk's office and on the Board of Appeals website (application #20-24).

Legal notice previously read into record.

Mr. Dattu Prajapati introduced himself and explained he was the brother of the applicant who was not feeling well, so he will be presenting. He provided a summary and explained the reasons why he felt it was important to allow the change. He stated they were only looking to put in one interior door to isolate the HVAC system, increase fire safety and provide separation for my parents.

Mr. Murray explained the application had requested to overturn the building department decision and if he wanted to change that he would have to resubmit the application depicting the variances necessary.

Mr. Viveiros stated he agrees with the Building Inspector, and if he is looking for relief from the 30 ft requirement, it would need to be readvertised. The intent of the by-law in 1989 was to reduce the size of the apartment.

Mr. Prajapati stated he did not exceed the 30% of the net floor and he was informed that was incorrect and the Board needed to go by the rules.

Mr. Murray restated the application was to overturn the decision and that his brother has been informed of the options.

He can remove the door between the units and move forward with the unit as an "in-law apartment". He can continue the appeal of the Building Inspector's decision or go to the Planning Board for a 2-Family Dwelling.

He stated he felt the best route for him is to go to Planning and go with the duplex and to withdraw this application without prejudice.

A suggestion was made to attain an attorney to help with the process.

Members of the Board agreed with the chairman's suggestions and interpretation.

Open to public hearing. Motion made and seconded to close the public hearing. 5-0 in favor

Mr. Sullivan stated the applicant understand the process and it appears it will be voted down. He stated his best bet is to withdraw without prejudice.

Mr. Murray reminded the applicant if he refiled, he would have to prove the hardships.

Motion made and seconded to accept the applicant's decision to withdraw without prejudice. 5-0 in favor.

New Hearing

21-2

1 Wayside

The petition of Nuance located at 1 Wayside, Burlington, MA 01803, as shown on the Burlington Assessor's records as the following Book-Page# 48436-107, Map and Parcel reference: 10-53-0. The applicant is seeking a Special Sign Permit to install two (2) Wall Signs: Sign A – Wall Sign 4'-0" x 22'-3" to be located on the North elevation (parallel to Wayside Rd.) at roof line. The proposed sign is to read 'NUANCE w/ a double stack graphic pattern on left'. Sign A –is denied due to Town of Burlington Sign by Law Art. 13, sect. 13.1.4.2 (referring also to 13.1.3.2.4) 13.1.4.2.1 Wall signs shall be the same as for business zones except that signs shall be six (6)

feet or less in height. 13.1.3.2.4 At the first-floor level a sign may extend across the full width of the wall. At other than the first-floor level, a sign shall be six (6) feet or less in length. Proposed Wall Sign A is 22'-3" in length and above the first-floor elevation. Sign B - Wall Sign 4'-0" x 22'-3" to be located on the South/East elevation (main parking lot above the building's main entry) at the roof line. The proposed sign is to read 'NUANCE w/ a double stack graphic pattern on left'. Sign B – is denied for the same reasons as Wall Sign A denial. Previous Town of Burlington Board of Appeals decision (#11793, issued Dec. '05) placed condition prohibiting sign illumination beyond 11:00pm and that there be no other signs on the building even if by right. Documentation in support of this proposal is available for public inspection as shown on plans filed with the Zoning Board of Appeals a copy of which is on file with the Town Clerk's office and on the Board of Appeals website (application #21-2).

Lyndsay Bennett representing Nuance Communications introduced herself and explained Nuance was looking for two signs to replace two existing exterior wall signs. She explained the two signs would be duplicate. The size, dimensions, timer and location will all remain the same.

Mr. Sheridan asked about the changes and was shown the differences, explaining the signage would change white to black. And at night there would be a glow lumen will be 60% defusing, 40 lumens down to 66 lumens per square foot.

Sign B is a duplicate sign and would be facing the Nuance parking lot and the entrance. She explained they are in a construction project and the are hoping to be getting visitors soon. The sign will help visitors know which entrance is the correct one.

Hearing open to the public. No one present to speak for or against. Motion made and seconded to close the public hearing. 5-0 in favor.

Motion made and seconded to grant a Special Sign Permit to Nuance Communications for property located a 1 wayside Road, for the installation of two Wall signs to be 4'-0 x 22'-3" to read Nuance with a double stacked graphic pattern on the left'. Sign A is to be located on the North elevation at roof level. Sign B is the same dimensions and working, to be located on the south/east elevation above the buildings' main entry. The signs were approved with the conditions the illuminations are not to exceed 90 lumens per square foot and to be placed on a timer to be turned off at 11:00 PM. Along with no other signage on the building even if by-right. 5-0 in favor.

Minutes for January 19th and February 2, 2021 Motion made and seconded to approve minutes from January 19, 2021 meeting. 5-0 in favor

Motion made and seconded to approve the minutes from February 2,2021. 5-0 in favor

Adjourn Motion made and seconded to adjourn. 5-0 in favor.