

R E C E I V E D  
AUG 13 2013



TOWN CLERK, ACTON

MINUTES OF THE REQUEST FOR AN EXTENSION TO  
93 CENTRAL STREET & 113 CENTRAL STREET

HEARING # 09-03 & HEARING 09-04

The discussion was re-opened on Monday, August 5, 2013 at 8:00 pm

Ken Kozik, Chairman opened the discussion by stating to everyone present that they are not here tonight to discuss whether the petitioner, Jim D'Agostine should or should not have the 40B project because he's already been granted the Comprehensive Permits. In the case of both projects, the petitioner has not started any construction yet and is getting close to the end of the term of the decision. When the decision was written both hearings included, a statement in the decision. Ken read the statement. Basically, it gives the Board the right to extend or deny the extension. The petitioner has to show good cause. The discussion began at the last hearing about a month ago. The main reason for the petitioner wanting an extension of time is due to financial reasons. The petitioner stated that was the reason for not beginning the project. The neighbor who abutted the 40B property when it was approved, has sold her home, so the Board felt the new neighbor should at least have a chance to come back to see what's going on.

Ken asked Jim D'Agostine, if he has a few more things to add since they met a month ago as to why this Board should grant an extension with good cause. Mr. D'Agostine said in the past few years the real estate market was down and banks weren't loaning money on 40B projects and his investors were cautious because of where the market values were. Because of that it would not be cost effective or cost feasible during that period. The market in the past few months has started going up especially in towns like Acton. Banks, buyers, and investors are interested so they are ready to start to move forward. More specifically, the petitioner stated that he had sought financing and it was unavailable.

Ken asked how long of an extension they are looking for. Mr. D'Agostine said twelve to eighteen months but he'd be happy with a year. Ken asked Scott if the Town of Acton or the Planning Department have an opinion on this. Scott responded stating that they don't object to an extension at this time. Ken asked Scott if there is a duration of time in mind and if the petitioner was looking for another three years would the town object. Scott responded that three years might be excessive. He thinks twelve to eighteen months is reasonable. Jon asked Scott if he was aware of any 40B extensions that have been granted in the past specifically by the Board of Appeals. Scott was not aware of any in the last five years. To his knowledge does not know of any. Rick Fallon is wondering exactly what they are extending, is it the first shovel in the ground. Scott responded that under Section 10.6 of the decision it's when construction begins. Rick asked what exactly does that mean. Scott interprets that to mean a building permit issued by the Town of Acton. Jon Wagner asked Scott if the extension was granted today what has to happen between now and when the permit is issued. In order for the permit to be issued you have to meet all the required approvals from each department which includes, building code, engineering, wetlands, board of health, and zoning which would include the Board of Appeals decision and the attached conditions. Once the permit is issued they have six months to begin the work.

Ken asked for comments from the audience and reminded the audience again, that this project has been approved so this is not a question of approving or disapproving it's a question of finding just cause to extend the decision.

John Horne, 101 Central Street is one of the abutters to the property has concerns and wants proof that the financing is in place before the extension is granted. Another issue he had is with the lack of maintenance and the disrepair of the property in the last three years. Ken Guditz, 81 Central Street, asked the expiration date for both properties. Scott responded that 93 Central expires on August 31<sup>st</sup> and 113 Central Street expires in October. Jill Defoe, 103 Central Street is wondering how they get proof that he did in fact have a hardship, she believes he is struggling. Another abutter at 107 Central and neighbor to 113 Central said they have not been good neighbors and the lot at 113 Central is a mess. Eric Johnson of 85 Central Street agrees with everyone else that it's been an eye sore for the last three years. He asked if there was a notification for neighbors when a building permit is issued. Abutter Eric Johnson stated that the property was on the market recently. Ken Kozik said the developer has the option to make other financial arrangements on the property.

Jon Wagner asked Scott if he sells the property to another developer, what happens to the Comprehensive Permit. Scott responded by saying they would have to come before the Board of Appeals again with the request for a change of ownership. Jon then asked Mr. D'Agostine if he did in good faith try to get a loan and was rejected. Mr. D'Agostine responded, as a realtor and being in the business the economics were terrible and due to the economics they couldn't get the loan because the bank said it looked too risky.

Ken moved to close the hearing for the extension.

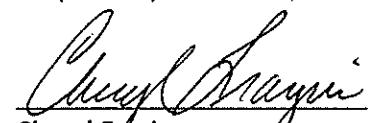
Rick Fallon made a motion to GRANT a ten (10) month extension on the condition of maintaining the property consistent with the neighboring property and as it is occupied and construction begun and diligently pursued.

The Board voted to ALLOW the GRANTING of the EXTENSION 2 to 1 subject with the following conditions:

1. A ten month extension
2. Maintaining the property consistent with neighborhood properties as if occupied
3. With the building permit issued and the excavation begun.

Richard Fallon to write the decision.

Respectfully submitted,

  
Cheryl Frazier  
Secretary, Board of Appeals

  
Ken Kozik  
Chairman, Board of Appeals