

Zoning Board of Appeals Meeting Minutes

Minutes of August 10, 2016

Hearing on the petition of Matt Schold of 77 Chickering Road, Spencer, MA for an Appeal on the Building Inspector's Decision to deny a building permit to construct three 24-unit buildings 4 ½ stories tall on the footprint approved in 1972, on property located at 503-505 Stafford Street, Cherry Valley, MA

Members present: David Kirwan, Chair; David Orth, Acting Clerk; Vaughn Hathaway and Paul Schold

Alternate members present: Jim Reinke, Mary Moore, and Dick Johnston

Meeting called to order at 8:33PM

Instructions given on hearing procedures

Paul Schold recused himself due to a conflict of interest because Matt Schold is his son.

Voting at tonight's hearing: Vaughn Hathaway, David Kirwan, Jim Reinke, David Orth, Dick Johnston

Mr. Orth read the Notice; Application; a letter to Robert Richard of Staffordshire Properties from George Kiritsy, Attorney for the applicant; and a letter from the Building Inspector

Submitted into evidence: a Plot Plan; Architect drawings of the proposed structures; pictures of the proposed structures

Correspondence received: Site Consideration from the Building Inspector; a letter from Michelle Buck, Town Planner and attached was 1972 ZBA Decision.

Mr. Kirwan read the correspondence into the record and then opened the hearing to the applicant to address the Board.

George Kiritsy, Attorney representing the applicant. Matt Schold was not present.

This is an appeal of the Building Inspector's denial of a building permit relative to the Variance granted in 1972.

The question before the Board is one of the terms of the variance granted by the Board in 1972 that is still in effect. They need to see what the terms and the limitations were and legally what can the property owner do with the benefit of the zoning relief granted and remains in place relative to that law.

They looked at what was the focus of the variance. A description on the first stage of the variance document shows why that applicant was before the Zoning Board seeking zoning relief.

In the first paragraph of the 1972 Decision, the applicant did not identify height of the building as an issue before the Board. The height of the building wasn't the subject of the variance request, because it was going to comply with zoning and was going to be built to the limitations zoning allowed. The height of the building was not the focus of the zoning relief requested.

Then there was discussion as to what the project would be like. At the bottom of page one was a note saying that is the term of the variance and it wasn't at the point saying the Variance was granted.

At the bottom of page one it says the Board agreed that this was a term of the variance and they hadn't heard the project presentation yet.

In reading the script, they had already decided to grant the variance, but there's one limitation before they heard what the project was or what the abutters were saying about the project.

He suggested the Board read the 1972 document in full, because it talks about the size of the project, was it acceptable for schools, how many children would there be, will there be federal subsidies and there were no federal subsidies; how much was rent, what were the building materials, etc. Things like that can't even be discussed in today's world.

After they discussed what the application for the variance was and why they were there for zoning relief, they presented preliminary sketches. There were no architectural plans presented to the Board at that time. There was a layout, or plot plan showing where the structures were going. They were building multi-families based on that design and that was the concept presented before the Board.

They saw what the zoning relief was in the zoning documents submitted and there was nothing in those documents relative to height. He said the conversations relative to the rent, was no more binding and no more part of the Board's vote, than the conversation about the height of the building or what the building materials were going to be, or if federal subsidies would be allowed, etc. From a legal perspective, the Board acts by vote and if the Board wants to have a condition, they can incorporate that condition in their vote. They would need to say, I vote to approve the variance, subject to height limitation of 2 ½ stories or whatever.

The reality is the ZBA in 1972 did not do that.

The terms of the vote were very clear. The Board met in Executive Session, they voted to grant the variance and there was nothing in the variance limiting the height of the building, because that wasn't before the Board and wasn't the subject of the variance.

Mr. Hathaway asked to clarify if that was part of the petition request.

Mr. Kiritsy said it didn't appear to be.

Mr. Hathaway said there are many things that are not put in the decisions and it does not mean that simply by not being referred to, it can therefore be considered to be able to be unrestricted.

Mr. Kiritsy said there was the petition request and there was nothing in the request regarding the height of the building.

Ms. Moore noted on the second page of the document it spoke about the height of the building.

Mr. Kiritsy said that was part of the Board's discussion and they also talked about schoolchildren and septic systems.

Page one has the actual application for zoning relief and height was not in there. There was a lot discussion that had nothing to do with the actual application, but are put in the minutes and that doesn't mean that was the focus of what the terms of the variance were.

That's the same thing for here, what's the height of the building and right now, they can only have 2 ½ stories.

Almost immediately, after the variance was granted and the first stage was built, those buildings that are there are 3 ½ stories tall and were built back in the 70s when there wasn't a height limitation. The building inspector granted a building permit because there wasn't a height restriction when those building were built.

They are applying for a building permit that complies with Leicester's current zoning relative to height and seeking no more than what's already permitted with the variance. They are not seeking to expand height beyond what was allowed under the Leicester Zoning Bylaw.

We need to look at what this language says in the 1972 document and it's clear that the language is not part of the vote, because they do have the benefit of the vote.

It says In Executive Session, Donald Stephens made a motion to grant the variance as per plot plan with all egresses and exits to be 30' wide off Stafford Street and placed at oblique angles. All roads drainage, sewerage, water systems, maintenance and security to be taken care of by Duquette Builders & Realty, Inc. it was seconded by Guy Shute. It was a unanimous vote to grant, signed by Mr. Dube, Mr. McGauley, Mr. Fyrbeck, Mr. Shute, Mr. Stephens and Mr. Cundall. There were no limitations relative to the height of the building or to building material, even though it was discussed many times during the meeting.

Mr. Orth said the motion mentions per plot plan. He asked for a copy of the plot plan and if the plot plan showed the height of the buildings.

Mr. Kiritsy said the plot plan just shows the lot and there was no doubt that the vote clearly said per plot plan and it shows the layout of the buildings on the lot.

They have met with the building inspector and fire chief, who indicated not having a problem with this and the only reason there was a denial of the building permit was based on height.

Mr. Orth noted he didn't know what the plot plan showed.

Mr. Kiritsy said the plot plan was not here and what they do have is the application for a building permit that was denied based on height. That's what brings them before the Board tonight on an Appeal on the Denial of a Building Permit, because the application was denied only on height.

According to the Building Inspector, he's okay with the location and the fire chief was okay because they widened the access to accommodate the fire apparatus.

Mr. Hathaway asked Mr. Kiritsy to confirm the statement that they would be allowed to build because there was nothing stated about height.

Mr. Kiritsy said Leicester didn't have a height limitation.

Mr. Hathaway said it clearly states in the Bylaw "no building over 35 feet in height shall be used for habitation", regardless of the fact that it says "55-feet". It clearly says in two places, no building over 35 feet in height shall be used for habitation and he assumes this building will be used for habitation.

Mr. Kiritsy said yes it will and they were told it was 5 ½ stories.

Mr. Hathaway said it does say buildings can be built to 5 ½ stories high, but it clearly states that no building over 35 feet in height shall be used for habitation.

Mr. Kiritsy said it's unfortunate the Building Inspector didn't deny it based on that, as opposed to denying based on 1972 Variance. Their appeal is based on the limitations under the variance and to build under the current zoning. If the Building Inspector indicated that's what it was, he certainly would have reviewed that. He was not prepared for that and would want to talk with his client first to consider continuing the public hearing, so they can address that issue.

It was presented to him that the application denial was based on the interpretation of the 1972 variance and not based on current zoning.

Mr. Hathaway pointed out that his argument was being in harmony with the Bylaw.

Mr. Kiristy asked for a few minutes to confer with his client, Wayne Richards. Mr. Kirwan agreed.

Mr. Paul Schold asked if "used for habitation," meant someone had to be sleeping there.

Mr. Hathaway said yes, but he did not have the formal definition available.

Mr. Paul Schold said the fire station is 42 feet. Mr. Hathaway said no one will be living there.

Mr. Paul Schold disagreed because there will be beds there and they will be sleeping there.

Mr. Hathaway said this is from the Bylaw.

Mr. Paul Schold asked why the Town didn't have to abide by that Bylaw.

Mr. Hathaway said that is not what we are hearing and had no idea how they were able to get by that.

Mr. Paul Schold said if that sentence in the Bylaw has to be argued by this applicant, then the Board needs to explain the Fire Department, because those plans show 42 feet and there will be habitation there.

Mr. Hathaway said we are not hearing that and right now he can only respond to what the Board is hearing.

If it was said they can have 4 ½ stories under 35-feet, then his argument goes away.
Mr. Kiristy asked how the Town determined height and if it was from the eaves.
Mr. Hathaway wasn't sure.

Mr. Kiristy said maybe the best way to deal with this is not with the number of stories, as defined in the 1972 variance, deal with it with height of the building, which he felt would be appropriate. They are exceeding 35-feet on the current application and felt a denial would be appropriate based on that. Not based on 2 ½ stories, but based on the fact that it exceeds 35-feet.

They would present plans to the Building Inspector based on 35 feet and the Building Inspector will know that will be the controlling number, not number of stories.
That is what he is requesting of the Board, to have that kind of a vote.
He does believe their application exceeds 35-feet, which is a fair point the Board raised. They will not be dealing with height in number of stories, but deal with the Zoning Bylaw height limitation should be the dimensional control.

Mr. Hathaway said the petition needs to comply with the entire Bylaw. If the Board finds something else in violation of the Bylaw, the Board won't say they only care about the height and don't worry about the other issue that is also in violation of the Bylaw.

Mr. Kiristy said they filed their application based on the number of stories. The Board can certainly uphold the denial, not based on the number of stories, but based on the height.
He respectfully requested that the Board, given the fact that they are over the 35-feet, uphold the Building Inspector's denial based on the height of the building, that the 2 ½ stories was not a portion of the 1972 variance vote, however any project would have to comply with zoning height limitations under the Zoning Bylaw.

Mr. Orth said the only value there would be is to see the original plot plan that was presented to the Board at that time, because the Board based their decision on the plot plan and it's likely that plot plan did not contain the height of the buildings or number of stories.
Mr. Hathaway agreed because their plan showed nothing then, it's the Board's opinion now, height needs to be shown.

Mr. Kirwan said what he would prefer rather than taking a motion on what the number of stories is, there have been a number of opinions voiced in opposition from what Mr. Kiristy has positioned.
He felt the argument does make some sense, but would feel more comfortable going back to the Building Inspector and Attorney Cove.

Mr. Hathaway said he understood why Mr. Kiritsy wanted the Board to deny the appeal, but his thought was why not withdraw the request for appeal.

Mr. Kiritsy asked to consider continuing to the next meeting to give the Board the opportunity to talk with Attorney Cove.

He said if the Board decides to ask Attorney Cove for an opinion, in his own opinion explained that, the controlling portion of the document before the Board is to vote and absence of a term in that vote means, it's not a portion of the decision. Had that been part of the vote, the original applicant may have appealed as well.

Mr. Hathaway said the Board hears petitions for people who want to do certain things and it's either denied or granted based on what they specifically ask for. The fact that the Board grants something doesn't mean that anything they don't talk about is fair game.

Mr. Kiritsy said hypothetically, earlier he asked for a variance for a lot located at Carey Hill Estates where someone could put in a small Cape house. Unless the Board said they were limited to a small Cape, any type home can go there.

Mr. Hathaway agreed that the Board does put conditions on their decisions and conditions are based on any exceptions the petitioner specifically asked for.

Mr. Kiritsy said if that's the case, they didn't ask for 2 ½ story and that is seen in the first paragraph. Leicester keeps copious notes and at the beginning of the 1972 decision, it talks on the public hearing, what they are looking for, 150-units, they identify the number of units, how many bedrooms there will be and that was what was on the agenda. Then it goes on to talk about what was presented with it and nothing in there that mentions architecture.

Mr. Kirwan said what he found confusing was, he did not feel that this Board or the Board in 1972 said the applicant wants 20 units with 2 bedrooms and 10 units with 3 bedrooms, therefore you will be limited to 2 ½ stories. He asked where those numbers came from and why was it written into record. That it was stipulated the granting of a variance was based on this. He didn't think a Board member made up that the building would be 2 ½ stories and therefore that is what the limit will be. Something must have been brought before the Board that presented the limit of 2 ½ stories.

Mr. Kiritsy said he was sure that the applicant in 1972 just said it and they would plan a 2 ½-story building. No different in asking what he would have built on the lot at Carey Hill Estates, and he would have said a small Cape. It's no different than asking what the buildings would be made out of and it was said brick and stucco. Those buildings aren't brick or stucco, they are vinyl. It's not as though it was written into the decision and there are things that were done different.

Things discussed are no more part of the decision than the number of stories. It's fair game to ask the question, how many stories, but when the time comes, they built 3 ½ stories the very next year. It was not based on stories, it was based on what the designs were and there were no limitations given.

Mr. Kirwan said it reads as if it was a limitation, it's a stipulation and he agreed it being a part of the write up that probably should have been put in the vote, but it is a stipulation.

Mr. Kiritsy asked whose stipulation. Mr. Kirwan said the Zoning Board.

Mr. Kiritsy said it's not part of the vote where it's stated. Mr. Kirwan said he didn't understand it himself, because the vote happens two pages later.

Mr. Johnston said the original footprint of the plot plan would not support a mix of 24 apartments in a 2 ½-story building. The footprint was not big enough.

The applicant is proposing to do 6 apartments per floor, because 2 ½-floors would be only 18 apartments. That's all that can be accommodated and he didn't understand where the 2 ½-stories came from.

Back in the 1970s that was the standard way of building garden apartments, 2 ½-stories and they were all bigger than this footprint, in order to accommodate a mix of 2 bedroom and 1 bedroom apartments. This footprint does not support 24-units in one building.

He further suggested to the petitioners that they stop referring to one-half stories. The existing buildings are three stories, not 2 ½ and they are proposing 5 story, not 4 ½ story buildings.

Mr. Hathaway said he was making a point on how the applicant kept saying something that's not necessarily part of a decision can be considered unrestricted.

Getting back to the main point, it sounds like there has been something identified that makes this moot.

Mr. Kiritsy said they don't want to have to come back before the Board on another issue and that's why he suggested to identify this being under a dimensional control.

Mr. Hathaway said his concern was being painted into a corner to something else that was agreed to in spite of thinking about what's here and now.

Mr. Kiritsy said let's say I come in and ask for a building to be 35-feet based on the Zoning Bylaw and I'm told it's 3 ½ stories, but 2 ½ stories is off the table, it's 35 feet. He has to go back to the Zoning Board of Appeals on the issue of 3 ½ stories versus 35 feet, if the dimensional control is not under the variance to advocate, would be the only reason to deny the variance. It was properly denied for the wrong reasons.

He was not trying to pick a fight with the Building Inspector or corner the Board into claiming there was a mess up. The Building Inspector should have said height and he said stories and now they are here to get it overturned.

He felt they really should identify what the issues were going forward, so they aren't here wasting everyone's time.

Ms. Moore suggested reading the Zoning Bylaws and then follow them. The petitioner is asking the Board to only deal with one violation and what if someone finds another violation that doesn't comply with the Zoning Laws, does the Board say they will only listen to one violation.

Mr. Hathaway said we are usually in agreement saying or going with the argument it's in harmony with the intent and purpose of the Bylaw, but it actually isn't here. Now the Board is being asked to uphold the Building Inspector decision and wording it for feet instead of stories, but the Board does not want to be painted into a corner because it could be something altogether different.

Mr. Kiritsy said if he had a plan that was denied on the front yard setbacks and rear yard setbacks, that's something he would expect the Building Inspector to turn down and that's not the case here. The only thing he had to worry about was height.

If he came back with a plan showing the building at 35-feet, he does not want the Building Inspector re-raising the issues of stories and he would like to say the story issue was done.

He would like to find out what was the controlling height limitation, because he is not looking at the numbers of stories; he is looking at the height of the building. If the Board denies, then the building inspector knows the 2 ½ stories is not the dimensional control for this site, however 35-foot height is and they are perfectly fine with that vote. That will affirm to the building inspector and give them guidance for their application.

Mr. Kirwan said his concern was there were three experienced people, the Building Inspector, the Town Planner and Town Attorney, who offered their opinion on their interpretation regarding the document that says 2 ½ stories. He does not want to wipe that off the table and give a false sense of security that 35 feet is the only limitation factor. He would be more comfortable if the application was withdrawn, then he can discuss this further with those officials.

Mr. Kiritsy asked if the Building Inspector bases his entire case on the 2 ½ stories and if the building inspector is wrong, he will be prepared to affirm him only on that. It's either 35-feet or out and he can't deny it based on that. All that does is put the Building Inspector into a corner, which he will take advantage on that.

It's fine to go to Attorney Cove, but if Attorney Cove comes back and says you got 2 ½ stories and 35 feet, you might as well duke it out. We will either be duking it out now or duking it out down the road when he comes in with a 35-foot building and Attorney Cove says it's 2 ½-stories. The building inspector didn't turn it down because of height, he turned it down because of stories.

Mr. Kiritsy said If the Board wants to go back to Attorney Cove that is fine, in order to put this to rest, but he does want guidance from the Board to give his client. He will go back and revisit, they will redesign based on height, and height limitations admitted.

Mr. Kiritsy felt they could still work the building in the 35 foot height limitation with more than 2 ½ stories. That's going to be the question as to which control, the bylaw or the 1972 variance that doesn't have the language in the vote.

Mr. Orth said let's assume the 2 ½ story was in the vote in the variance and apparently the buildings were built at 3 ½ stories, so they are already in violation. As an observation, it would seem, based on the buildings built at that time, they were built in violation of the bylaw.

Mr. Johnston said another observation, the applicant is talking about 2½ stories and the existing buildings are 3 stories and they are proposing a 5 story building.

Mr. Reinke asked what were the height of the buildings that are currently there; is there a national definition on height; is it written somewhere that a story is 10 feet and is there a definition on the height of a building?

Ms. Moore said it's stated under section 4.2.03 "The limitations on height of buildings shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of building which features are in no way used for living purposes." She would be concerned with where they took their measurements.

Mr. Kiritsy said it goes to the mean height between the eaves and the ridge of the gable.

Mr. Kirwan read Section 1.3 Definitions; Building Height, as stated in the Zoning Bylaws.

Mr. Johnston said there were some instructions in the Town Planner's memo about the 2½-story issue being reconfirmed in 2014. He didn't see that in the decision.

Mr. Kirwan said the 2014 decision references to the 1972 decision.

Mr. Kiritsy said if the Board is going to restrict something, the Board has to say they are restricting it. He asked if the Board at that time also restricted children because that was also discussed.

Mr. Hathaway said every decision made by this Board, there have been many things discussed but not mentioned in the vote.

Mr. Kiritsy said if he got a variance on a lot for frontage and didn't mention area, it's omitted, it's out.

Mr. Hathaway said if the variance request was for both square footage and area.....

Mr. Kiritsy said his variance request here wasn't height, it wasn't part of the variance application, it never showed up.

Mr. Hathaway said there are a lot of the things that didn't show up

Mr. Kiritsy said that is what it is. To give them 2 ½ stories isn't zoning relief. They aren't asking for zoning relief to allow them to build 2 ½ stories. For example, if he were to apply for a variance right now, because the height limitations are only 35-feet and he wants to build 60-foot structure that would require him to apply for a variance. Back then they didn't ask for a height variance to say they are only allowed 2 stories and they want to go 2 ½ stories, that wasn't on the application. The Board didn't deal with that and didn't vote on it.

Mr. Hathaway said it was part of the discussion.

Mr. Kiritsy said rent was mentioned, building materials, children and sewers all were mentioned, but was not part of the vote.

Mr. Hathaway said he had voted in opposition at the 2014 hearing and realized this application was not coming from that perspective. Nevertheless, he is personally having trouble accepting the argument on the vote not mentioning anything about the height.

He explained that variances are granted for one-year time and if people don't act on them continuously from that point, which is why he voted in opposition in 2014.

Mr. Kiritsy said commencement of work,.....

Mr. Hathaway said and ongoing progress, you can't just start something and then leave it for 30-years.

Mr. Orth said the sewage issue was an ongoing process. Mr. Hathaway asked ongoing from 1972?

Mr. Orth said he remembers the sewer issue being an ongoing process and the Board granted that because it was an ongoing process.

Mr. Hathaway said he didn't see any documentation that from 1972 when the variance was granted, every year that was being acted upon. He is having a hard time going back 44 years.

Mr. Kiritsy said you don't involve going back 44 years to impose limitations that they didn't have in 1972.

It is what it is and the application is what it was, the variance was granted when it was granted, the site being developed as it's being developed, application for a building permit submitted.

Mr. Kiritsy asked his client, Mr. Wayne Richard, how he wanted to proceed, to continue, to withdraw or go to a vote on it.

Mr. Wayne Richard felt they were here for the variance limitation on stories and he was willing to work within the Zoning Bylaws, both for number of stories and the height.

Mr. Orth asked if they would be willing to go back to the Building Inspector to ask which would be valid, stories or height. He felt they could argue that 2 stories is not 35 feet, but which Bylaw

comes into play, the current Bylaw that states 35-feet or the reference to a 2 ½ story in the 1972 minutes. He asked which one would be valid.

Mr. Kiritsy suggested going on the height of the building, which is what they applied.

Mr. Orth suggested continuing the meeting and in the meantime, the applicant can discuss this with the Building Inspector, because he was the one who denied the permit, and discuss the 35-foot reference in the Bylaw, verses the 2 ½ story limitation noted in the minutes.

Mr. Richard said they were seeking relief from the 2 ½ story limitation and are willing to comply with the current number of stories in the Bylaw and current height requirement.

If the height is the governing factor, that's fine.

Mr. Orth said in his opinion, the Bylaw would trump what is in the minutes. If the Board were to put a limitation that would be in violation of the Bylaw then that's in violation of the Bylaw. He did not believe they could do that and that could be argued and the decision could be thrown out.

Mr. Richard agreed. He said they are happy with height and happy with the amount of stories in the Bylaw. The whole premise of the ZBA appeal is they want to live within the Bylaw, 5 ½ stories or 35 feet. No one picked up on the 35 feet, which was a footnote at the bottom of the page.

Ms. Moore said that's why if you comply with that, you go back to the Building Inspector and tell him you are complying with the Zoning Bylaw of today and never mind what was written years ago.

Mr. Richard said but he denied it.

Mr. Kiritsy agreed and said they go to the Building Inspector for 2 ½ stories and its denied, then they are back before the Board saying there is a 35 foot building that is 4 stories.

Mr. Richard said they are happy with the Bylaws and will abide by the stories or the height requirement and stay within the footprint.

Mr. Hathaway asked does the petitioner want to withdraw, continue or go to a vote.

Mr. Richard said the building permit was denied on stories.

Mr. Orth said the appeal is still on the table because they are appealing the building inspector's 2 ½ story determination. What the petitioner may want to do is talk with the Building Inspector regarding the 35 foot notation, which is clearly more than 2 ½ stories, because he felt the Bylaw trumps minutes.

Mr. Kiritsy said one of the things he asked earlier before it was decided to send this out for Attorney Cove's opinion, he asked for a vote affirming the Building Inspector and saying it's not 2 ½ stories. They are affirming not for the reasons stated in the letter of denial. They affirm based on the height of the proposed structure and the 2 ½ story limitation in the variance does not apply. Therefore, it gives the Building Inspector direction on a reapplication and then he will

look at the height of the building and not the number of stories. He will look at the building being under 5 ½ stories and under 35 feet and there won't be a reason to deny a building permit. That is the vote he was looking for, not the number of stories and affirming with the Building Inspector that it's over 35 feet.

Mr. Orth said if the Board was to propose a decision that trumps the bylaw, unless there is a specific reason, it would seem that 2 ½ story limitation is not compliant with the bylaw. He asked if that would be an accurate statement.

Mr. Hathaway said he was not prepared to present a motion on talking about stories, than he was prepared to make a motion that the Board upholds the decision of the Building Inspector based on the height.

Mr. Kiritsy said the Board can deny it based on stories. The Board could base their decision on number of stories. He does recognize it may not be the right way and he was saying, the right way to do this is to say, stories are out and height is in. The Board will uphold the denial of the Building Inspector based on height.

Mr. Orth asked if that was because the height was in the bylaw.

Mr. Kiritsy said yes, and they are below the number of stories in the Bylaw, but above the height.

Mr. Hathaway said what he was saying is, he was not prepared to make a decision either way on the stories, but he is prepared to make a decision based on.....

Mr. Kiritsy interrupted and pointed out in the Bylaw the notation on 35 feet and asked Mr. Hathaway where in the highlighted area it says there is a limitation of stories.

Mr. Hathaway said he agrees that he could be right but he was just not prepared tonight to make that decision after seeing that notation in the Bylaw.

Mr. Kiritsy said Mr. Hathaway was the one who raised the issue with height and that doesn't do anything with the number of stories.

Mr. Hathaway said if it's recommended to change it to height, fine. He is not prepared to present a motion tonight.

Mr. Orth read Section 4.2.06 "Height Restriction for Habitation. No building over 35 feet in height shall be used for human or animal habitation."

Mr. Richard said he felt no one was really opposed to this, the Town Planner or the Building Inspector, they were just uncertain, because there was some language floating around about 2 ½ stories and they didn't want to get caught in the middle. It was not that they were against it, they just didn't want to be in the position of making that decision, so they gave it to the ZBA.

They will comply with the height restrictions and they will comply with story restrictions, according to the building code. This will be consistent to what already exists there. The new buildings will be 3 stories, with sprinklers, there will be elevators and they will live within the current zoning laws.

The petition, as it's been floated here, is valid. It was denied for 2 ½ stories and that denial was not in accordance with the current bylaws and it should be granted relief.

Mr. Richard requested to have put in the minutes that they would be bound by the 35-foot height restrictions and any other building codes that apply.

Mr. Kirwan said as a member of this Board, it appears to him that the applicants were bullying and asked them to back off from what is being considered bullying against Mr. Hathaway's opinion. Mr. Hathaway had already expressed he was uncomfortable and if he were to call for a vote, there will probably be one person who would not be voting in favor. Maybe there are others who would and a 4 out of 5 vote is needed to pass.

All Mr. Hathaway was suggesting is that maybe we could come to a decision tonight on this, but there are some outstanding questions that need to be checked into and should be continued.

There seems to be an interpretation problem regarding the 2 ½ stories. He personally, was uncomfortable with the argument stated in the copy of the document provided. There are a lot of marks on the copy that can't be explained and that makes it look like it could have been cut and pasted.

He understood where the applicant was coming from and the discussion does seem to be positioned in a peculiar place, but he can't quite see why the Building Inspector, Town Counsel and Town Planner has put so much weight on it. And the Board does make reference back to the 1972 decision in 2014.

Mr. Kirwan asked the hearing be continued to the next meeting in order to give the Board time to further examine and define the outstanding issues and also allow the applicant to redesign the plan on the 35-foot limitation. Mr. Kiritsy agreed and apologized for the outburst.

MOTION: Mr. Hathaway moved to continue the public hearing on 503-505 Stafford Street on the Appeal of the Building Inspector's opinion to Wednesday, September 28, 2016.

SECONDED: Mr. Reinke – Discussion: Mr. Kiritsy agreed to extend any deadlines associated with the application to October 5, 2016.

VOTE: All in Favor

Meeting adjourned at 9:55PM

Respectfully submitted:

Barbara Knox

Barbara Knox