



ZONING BOARD OF APPEALS
TOWN OF MONTAGUE
ONE AVENUE A
TURNERS FALLS, MA 01376

NOTICE OF DECISION & VOTE

Owner / Applicant:

Town of Montague by its Selectmen

1 Avenue A

Turners Falls, MA 01476

Case No. 12-14

Date October 31, 2012

Premises Affected:

#26 East Main Street/33 Bridge Street,

#30 East Main Street,

#34 East Main Street and

#34-R East Main Street

Assessors' Map 29 Lot 116

F Co. Registry of Deeds: Bk 5577 Pg 106

Land Court Case # 09 TL 139170

rec. FCReg. of Deeds Bk 6057 Pg 350

Special Permit (X)

Variance Application (40A) (X)

Section 6 Ch. 40A - Finding ()

Site Plan Review ()

After a public hearing held on:

Wednesday, August 15, 2012

And continued to:

Wednesday, August 22, 2012

With a site visit on:

Tuesday, August 21, 2012

Plan Submitted: "Plan of Land prepared for The Town of Montague" by Daniel L. Werner, P.L.S. dated May 30, 2012, for land in Millers Falls at East Main and Bridge Streets. With notes

Lot A (& A1) - #26 East Main Street/33 Bridge Street,

Lot B - #30 East Main Street,

Lot C - #34 East Main Street

Parcel D - #34-R East Main Street

Parcel A1 – Sidewalk at #26 East Main Street, part of Lot A.

The Board of Appeals Finds:

1. There are four buildings on this property that are the subject of the requested relief. The property consists of a single parcel of land in downtown Millers Falls bordered by East Main Street, Bridge Street and the former land owner, New England Central Railroad, Inc.
2. The buildings are:
 - A corner lot commercial block w/residential at #26-28 East Main Street/33 Bridge Street, (Lot A);
 - A two-story commercial /residential building at #30 East Main Street, (Lot B);

- A single-family at #34 East Main Street, formerly a commercial use, (Lot C) and;
 - A garage/storage building at #34-R East Main Street, (Parcel D)
3. All four of the buildings had been owned at some point by separate parties. Each building owner had held a land lease or other lease rights, but did not own the land. This general arraignment had existed between the land owner (Railroad) and building owners for about 100 years.
 4. The four buildings are estimated to have existed at their current locations and been part of the Millers Falls downtown between 1900 and 1936.
 5. Certain defined portions of land had been leased or allocated for the exclusive use of a building.
 6. Certain other less defined portions of the land has been used for driveways, rear yard access, parking, shipping and loading, drainage and pedestrian access.
 7. Ownership of the buildings and the status of their land leases were a matter of dispute at the time of the Town of Montague's acquisition of the property through a tax taking.
 8. The buildings are entitled to an approval not required (ANR) division of the land under the Subdivision Control Law, Chapter 41 Section 81-L.
 9. The town seeks to attach land to the buildings with the result that allows the continued use of the buildings in the general land use patterns of the past.
 10. The town intends to allow the continued use of the common shared amenities of the land for driveways, rear yard access, shipping and loading access, drainage and pedestrian access through easements.
 11. No specific relief has been requested for the proposed division of the remaining land. (Lots E, F, & G)
 12. The town has expressed its intention to lay out as a public way (sidewalk) a section of Lot A shown on the plan as Parcel A1

The Board of Appeals Concludes:

- Zoning relief is required for the division the land of the four buildings. (lots A, B, C & Parcel D)
- No zoning relief is needed for the proposed division of the remaining land (lots E, F & G). Zoning relief may be required for specific future land use proposals.
- The buildings are non-conforming structures pursuant to Section 5.3 of the Montague Zoning By-Laws.
- A Special Permit pursuant to Section 5.1.4 (alterations of non-conforming ~~uses and~~ structures) of the Montague Zoning Bylaws is required.
- Special Permits and variances to the specific referenced sections of Section 5.4 (Dimensional Requirements) are not specifically required.
- To the extent possible such Dimensional Requirements shall be imposed in this decision.
- Land use patterns between the buildings may be preserved, to a large extent, by providing easements for traditional use and access

THE BOARD OF APPEALS VOTED:

To grant Special Permit for alterations of non-conforming uses and structures (pursuant to Section 5.1.4 of the Montague Zoning Bylaws) to allow the division of the land for the four buildings as shown on “Plan of Land prepared for The Town of Montague” by Daniel L. Werner, P.L.S. dated May 30, 2012 with notes for land in Millers Falls at East Main and Bridge Streets. Approval is for Lots A including A1, B, C, & Parcel D
General dimensions and conditions described below:

- Side yard setbacks of 0’ for #30, and 3 to 5’ more or less for #26 in the area between these two buildings. Each shall retain the rights to drainage and the rights to enter to repair the buildings.
- A rear yard setback of 25 feet from the rear shed to the 30’ driveway behind #26.
- A 5’ side yard setback for #34 to an existing 12 foot drive between #30 and #34;
- Lot areas and frontage shall be approximately:
Lot A - #26 - 5,600 sq. ft. and - 35 feet of frontage;
Lot B - #30 - 4,000 sq. ft. and - 44 feet of frontage;
Lot C - #34 - 2,900 sq. ft. and - 32 feet of frontage;
Parcel D - #34R - 2,900 sq. ft. and - 0 feet of frontage.

Conditions:

Easements to be developed that allow for at least the following:

- For driveway vehicular access and egress over #30 (lot B), to 34 rear yard and 34-R, and deliveries to the side door of #26. Also right to use part of drive for repair #34
- Vehicular access easement over 30’ wide drive off of Bridge Street to the rear of #26 and #34-R
- Parcel D, #34-R, is proposed to be sold or conveyed as a part of lot A, B, or C. This approval does not establish Parcel D as an independent lot. If desired the Planning Board must approve it under Sub-division Control.

The Board of Appeals shall review:

1. The final survey of lot line locations for conformance with this Special Permit.
2. The required easements and their locations for conformance with this Special Permit prior to conveying land.
3. Rights of access to repair buildings.
4. Access to rear yards and parking.
5. Any changes to the above shall be reviewed pursuant to Modifications and Approvals.
6. Modification and Approval: Any changes proposed shall be reviewed by the Board of Appeals or its designee. The Chairman or designee may approve changes if in substantial conformance with the intent of the Special Permit or may refer it to the Board. Changes consistent with the purpose of this approval may be allowed by the Board without further hearings. Further hearings shall be at the discretion of the Board. Approval shall not be unreasonably withheld.

The Board of Appeals States:

Although the Board has determined that variance and dimensional Special Permit relief is not required the applicant has demonstrated sufficient evidence of uniqueness and hardship as to allow relief by variance. The applicant has demonstrated that hardship is inevitable without relief. Buildings cannot be moved without significantly altering the character of a downtown setting. The land ownership is now coupled with ownership of four distressed buildings. The situation is impractical and an unnecessary burden for any single owner. Failure to grant relief would perpetuate financial and logistical and development hardships well into the future. Failure to grant relief would be counter productive, undermine the continuity and purpose of zoning by-laws and confound the public's interest.

The vote of the Zoning Board of Appeals was as follows:

- | | | | |
|-------------------------------------|-------------------|-------------------------------------|-------------------|
| 1. <u>Ernest L. Brown, Chairman</u> | <u>YES</u> | 2. <u>John Burek, Vice-Chairman</u> | <u>YES</u> |
| 3. <u>John Reynolds</u> | <u>YES</u> | 4. <u>Robert Sojka</u> | <u>YES</u> |
| 5. <u>Ericka Almeida</u> | <u>YES</u> | | |

IMPORTANT: Any appeal from the decision of the Town of Montague Zoning Board of Appeals can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (MGL) as amended, and must be filed in the office of the Town Clerk within twenty (20) days after the date of filing of the decision with the Town Clerk.

Board of Appeals

By Ernest L. Brown, Chairman Karen Casey-Chretien,
Clerk

Received for filing by Town Clerk: _____
Time Date

Twenty day appeal period ends: _____
Time Date

I HEREBY CERTIFY THAT NO APPEAL HAS BEEN FILED WITHIN 20 DAYS
FROM THE DATE THAT THIS DECISION WAS FILED WITH THE TOWN CLERK:

Montague Town Clerk Date

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Notice to be recorded by Landowner