

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MAY 04, 2011**

Members Present: Clayton M. Harrison, Chairman
Christopher Graham
Kimberley A. Fernandes, Clerk
Donna Lambert, Alternate
Kendal Tripp

Absent: Gerald Coutinho, Vice Chairman

Also Present: Ralph Souza, Building Inspector

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

*Note: Due to over capacity in the Selectmen's Meeting Room, the hearing was moved to the Town Hall basement.

Motion made by Ms. Lambert to recess the ZBA Meeting in order to move to the basement to meet capacity standards and to reconvene once setup is complete. Second by Mr. Graham. The Board voted unanimously in favor.

Westport Market / Salibi Realty II, LLC - RE: A public hearing on an application request by Westport Market, 291 American Legion Highway, seeking a Finding for the proposal of an expansion of an existing use (convenience/liquor store) by constructing a 4,200 sq.ft. addition with newly configured parking area under Article 4, Section 4.1.3. The property is located on Assessors Map – 61, Lots – 20A & 20D.

Sitting on Petitions: Harrison, Fernandes, Lambert, Tripp, Graham
Attending: Rabih Salibi, petitioner
Attorney Brian Corey, representing petitioner
Dan Aguiar, SITEC Engineering, representing petitioner
Abutters: William Kaylor, 45 Ridgeline Drive
Linda Lombardi, 79 Ridgeline Drive
Steve Marshall, 65 Sodom Road
Adrien Brodeur, 3 Greenfield Road
Michael Albernaz, 6 Karen Drive
Harold Pike, 6 Briar Drive
Howard Paine, 71 Sodom Road
Michael Altshuler, 103 Sodom Road

Attorney Corey stated part of tonight's proposal is for a Finding, which is not in opposition to the neighborhood. The majority of the proposal is for an addition for storage. At this time, Mr. Salibi is using storage containers and off site storage. The

addition will be more aesthetic to the neighborhood. This property is pre-existing as a legal non-conforming use. The finding is within legality. There are no additional services being proposed. This business is a full service market and package store. This business is similar to Lees Market and sits 1,000 ft. west of the existing commercial zone. Attorney Corey stated Route 177 is heavily traveled but the addition being proposed will not increase traffic. It is not more detrimental to have this business expand. Mr. Salibi has received a tremendous amount of support from his direct abutters on the expansion. The site plan shows an L-shaped lot and currently the building sits close to the western boundary; all the proposed expansion is to the east. Attorney Corey stated that a petition signed by direct abutters and letters from direct abutters have been received in support of this. Attorney Corey stated the proposal for gas will not be addressed.

Mr. Aguiar, SITEC, stated he took the building and mirrored it to create one large building. There will be a canopy over the doors, the same siding will be used on the exterior and it will keep the same roof line. Mr. Aguiar stated that existing conditions were reviewed before devising this proposal. There will be a designated entrance and exit with new curb cuts; all of which will be addressed with the Planning Board. The new parking lot will be paved and there will be screening and landscaping. Mr. Aguiar stated that when Mr. Salibi received letters of support for the expansion but concerns over the proposal of gas, Mr. Salibi met with his abutters and neighbors and took their concerns into consideration and removed the gas proposal. Mr. Aguiar stated that back in 2008, the ZBA allowed for the installation of cooler; the liquor sales will now be in separate area and able to be closed off.

Attorney Corey stated that the proposal has met all the ADA requirements and will be in compliance; while the present building does not. The trailer will be removed from the lot and the building has been designed in conformance with the site plan review process.

Mr. Harrison noted that the current size of the building is 3,500 sq.ft. and the proposed addition will make it 4,200 sq.ft. Mr. Aguiar stated that the proposed use for storage is 2,800 sq.ft. and the additional retail space will be 1,400 sq.ft. this will allow dedicated area for liquor sales.

Attorney Corey stated his client was here tonight after meeting with the Building Inspector who indicated that a finding would be needed. There will be white shingles and the roof line will remain the same height as the existing roofline. It will be a New England style building, which is stepped back from Route 177 and the abutters. His client has gone to great lengths to meet the non-detriment aspect. The signage will remain the same size but the Planning Board may want it moved during site plan review. Mr. Aguiar stated that deliveries will be in the front of the building (the loading area); with this new design, there will be two 24 ft. openings in the far east-end corner; employee parking will be in the rear of the property; there will be screening done with fencing and tree plantings. There will be dumpster area in the rear of the building. The site lighting on the existing building will be sufficient; the Planning Board requires it to be downcast, causing no glare to the area.

Again, Attorney Corey stated that his client is not seeking any action of the proposal of a driveway and gas station.

At this time, Mr. Harrison called for public input.

Mr. Altshuler asked if there would be a raised septic system; what is non-conforming.

Mr. Aguiar explained what the non-conformance was and as for a septic system, that was

the jurisdiction of the Board of Health, but there is no problem with having to pave over a septic system.

Mr. Harrison stated that all other Boards in Town must be approached over this proposal once it leaves here tonight. This property is in a residential area and a couple of minor changes have been allowed over the years; this is just another change but we are now dealing with a finding. This is an improvement in the existing use but there is a concern of the difference between the two trailers and 4,200 sq.ft. of building. Attorney Corey stated the property on the south side is heavily screened in order to block off most of the proposal.

Mr. Kaylor stated his concern was the traffic because there was no real entrance and exit but this proposal is a tremendous improvement to the area and he gives his whole-hearted support.

Ms. Lombardi asked how much of the new space will be for liquor. Mr. Salibi stated the new section will be for storage/merchandise and the old area will be used for the alcohol. Attorney Corey stated no new plan for interior layout was submitted but 2,800 sq.ft. is dedicated to storage and 1,400 sq.ft. is for retail. As for moving the interior area for liquor sales that would have to be addressed with the Board of Selectmen and the ABCC; but that is not being considered as part of this modification. The new configuration of the building will be for better public access, an office and storage.

Michael Sullivan, Outreach Coordinator for the Westport Economic Development Task Force stated this proposal meets the mission of the Task Force; the owner knows his business well and is well versed in all the required steps. The owner is very impressive with his understanding of his customers needs.

Mr. Marshall questioned how close the new building would be to Sodom Road. Mr. Aguiar stated it is 220 ft. with at least 50-75 ft. for visibility, there are no impediments. Mr. Brodeur stated he is in favor of this proposed plan; Mr. Salibi is a very responsible business man.

Mr. Albernaz stated there has been a business in this location for almost 40 year, with many owners at this location but Mr. Salibi has been improving this property since he took it over and he employs many Westport people. This business is beneficial to Westport because we have a market we can go to rather than have to drive into Tiverton. Mr. Paine stated this is a good business, Mr. Salibi deserves a lot of credit and we need jobs. As for the idea of gas at this location, Mr. Paine stated that was not a good idea but the rest of the proposal has his blessing.

Mr. Harrison requested that there be plans available for the Finding request eliminating the variance items. Mr. Aguiar asked that it be made a condition after the hearing for the Finding and that the ZBA dovetail with the Planning Board for the site plan review.

Motion made by Ms. Lambert to close the hearing at 8:15. Second by Mr. Graham. The Board voted unanimously in favor.

Motion made by Mr. Graham that the Board finds the building and newly configured plan of the parking area to not be more substantially detrimental than the pre-existing non-conforming use. The conditions: The application will be subject to site plan review by the Planning Board; plans are to be submitted for the interior layout of the building and the new configuration of the parking area; and plans are to be submitted for the exterior layout. Second by Ms. Lambert. The Board voted unanimously in favor.

Westport Market / Salibi Realty II, LLC - RE: A public hearing on an application request by Westport Market, 291 American Legion Highway, seeking a Variance for relief from Article 4, Section 4.0.1 (A) to allow the construction of a drive-thru facility; and to allow the construction of a fueling station. The property is located on Assessors Map – 61, Lots – 20A & 20D.

Attorney Brian Corey stated his client would like to withdraw the request for the gas filling station at this time but would like to continue with the request for construction of a drive-thru facility.

Motion made by Ms. Lambert to accept the request to withdraw the fueling location. Second by Ms. Fernandes. The Board voted unanimously in favor.

Attorney Corey stated there has been a market at this location since the 1970's and it is located at the corner of Rte. 177 and Sodom Road. The owner has prepared sandwiches, coffee and pastry in his store. The proposal is to install a drive-thru window to handle simple orders and to make the store more handicapped accessible and available to seniors and young mothers with children.

Mr. Harrison stated this was being requested under Article 4.0.1 (A) on the application.

Mr. Aguiar stated Article 14 is the Drive-Thru Facility, which is granted under the Planning Board; the proposal does comply with all the requirements. Attorney Corey stated that the gas station is being withdrawn but his client is asking for a moderate variance. There will be no gas, there will be moving of the loading docks and the trash disposal area and his client is willing to implement any aesthetics to improve the neighborhood. Ms. Lambert questioned what would be available at the drive-thru.

Attorney Corey stated no alcohol; just milk, bread, sandwich, coffee, simple items. Ms. Fernandes questioned the flow of traffic around the building. Mr. Aguiar stated that the plan has provided for a drive-thru lane and a bypass lane to allow traffic to continue with the removal of the gas pumps, there is even more room; there is an area to be able to stack 8 – 10.

Mr. Altshuler asked if there was an estimate of traffic, especially with a drive thru. Mr.

Aguiar stated this is not a destination market; it draws on existing traffic and the surrounding neighborhood. There is no detriment. As for a traffic study, the Planning Board may want that type of information but there is no idea on the use of a drive-thru.

Attorney Corey stated that site plan review will be looking at these types of questions; we have extra area, so this just worked, it is a benefit for the market. As for a Special Permit, the Planning Board is the authority and granting agent for the drive-thru.

Mr. Harrison asked if this could lead to a future Dunkin Donuts franchise. Attorney Corey stated no.

Attorney Corey stated the hardship is the changing business climate and the need to stay competitive in order to survive; this is a permitted business in a unique area. Mr. Salibi is not asking for the variance for any other than that. The hours of operation for the drive thru will be Monday – Thursday 7:00 am to 10:00 pm, Friday and Saturday 7:00 am to 10:30 pm and on Sunday 7:00 am to 8:00 pm. This is an expansion to the pre-existing, non-conforming use. It is not more detrimental and has the support of the area. Ms. Fernandes stated she was not sure of the hardship part; what would change if the drive-

thru were not allowed. Mr. Aguiar stated that is up to the Planning Board and there are a number of ways to exit the site.

Attorney Corey stated there are levels of hardship and it becomes immaterial once the Board makes a determination; this is not a destination place. It is a business down the road, people are lazy and don't want to get out of their car for a simple item but a large part of this proposal is due to the economic pressure business owners are facing.

Mr. Graham asked under Section 2.4.2.2, can the Board grant a variance on a structure and not the land. Attorney Corey stated no; a special permit is for the grantee not the land and a variance is for the land.

Motion made by Ms. Fernandes to close the hearing at 9:00 pm. Second by Ms. Lambert. The Board voted unanimously in favor.

Discussion:


Mr. Tripp stated he could not see more traffic and noise because of a drive thru, if there is an increase in business, it will be very minor. Mr. Harrison stated the nature of the business is not a drive thru; this is a nice piece of property especially with the addition of a drive thru, it would be an easy sell; it is hard to establish a hardship here. Mr. Graham stated part of a hardship can be financial.

Motion made by Ms. Lambert to grant the request subject to Planning Board approval of a special permit due to the economic hardship; this proposal is not more detrimental to the neighborhood. Second by Ms. Fernandes. The Board voted 3 in favor, 2-opposed (Harrison, Graham). The request is denied.


Motion made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting at 9:30 PM. Second by Mr. Graham. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
To the Zoning Board of Appeals

APPROVED: 

Clayton M. Harrison, Chairman