

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MAY 25, 2016**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Larry Kidney
Roger Menard
Heather Salva, Clerk

Absent: Donna Lambert
Gary Simmons

Chairman Graham called the meeting to order at 7:00PM in the Westport Town Hall, 816 Main Rd. Westport, MA with the reciting of the Pledge of Allegiance by all present.

Chairman's Announcement: Under MGL Chapter 30 A, Section 20 (f)- Meeting being recorded. He also noted the 44 person maximum capacity under the fire regulation and counted 38 people present.

Voting on Finding: All present members

Westport River Watershed Alliance – RE: Continued hearing on an application request seeking a Finding under Westport Zoning Bylaw Section 4.1.3 (Alteration) that by permitting the proposed addition to the structure “such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood”. Petitioner seeks to build an addition on the existing structure to house stairs to the second floor of the building, the restrooms and mechanical equipment. The parcel is shown on Assessor's Map 39, Lot 1A. Subject Property is located at 493 Old County Road, Westport, MA.

And

Westport River Watershed Alliance – RE: An application request for a Special Permit pursuant to Article 8.3.3 of the Westport Zoning Bylaws to allow applicant to use property for offices and educational purposes. The parcel is shown on Assessor's Map 39, Lot 1A. The subject property is located at 493 Old County Road, Westport, MA.

ZBA Member Roger Menard announced that he and his wife were members of the WRWA but feels he can remain impartial.

Charles Appleton, Blossom Rd., Project Manager and Facility Director spoke of why WRWA purchased the building and stated nobody else would have wanted it. He stated WRWA is an environmental organization and the location was ideal to address the issues that affect the river. They also felt fixing a blighted building was important and consider it an investment to their 40-year commitment.

Tom Schmitt, WRWA President shared a power point that he said he would leave for the record as supporting documentation for the 1st application addressing use or structure.

Mr. Coutinho asked about parking and how the illustration shows cars where the original picture shows a bunch of kayaks. He also stated that the Landing Commission is the co-applicant and he wants to be clear that they are not showing separate parking for the kayak business. Mr. Schmitt said the parking was for everybody and not designated.

David Emilita, Planner, 795 Pine Hill Rd. is assisting the Alliance in obtaining their permits. He stated the picture was not depicting any changes to the plans for the kayaks; that they were making it safer by having designated parking area and providing adequate access for the Fire Dept. equipment. Mr. Coutinho if there would be delineation of parking. Mr. Emilita said there would be blue paint for the designated handicap spaces and logs for the others.

Mr. Schmitt discussed the 2nd application stating there were no toxins, the grading improves the storm water, there are roof drains in recharge areas, wastewater and gray water will be collected, stored and reused so it will not contaminate ground water. He also provided a list of supporting public entities. The Chair requested copies of these letters and Mr. Schmitt said he would provide them this evening.

Deborah Weaver, Drift Rd. discussed the public benefits.

The Chair read into the minutes a letter from the Landing Commission dated 5/18/16 stating they concur with WRWA for the special permit application and wish to be considered a co-applicant (on file). He also read into the minutes a letter from Hanley McGuire, abutters dated 5/25/16 opposing the WRWA proposal (on file).

Antone Vieira, Selectman said he has several letters and emails from abutters concerned with this proposal. He said if there were ever 40 cars there then shame on the Police, Fire, and Town for ever allowing it and not acting on it. He stated at one point WRWA placed boulders on the property to restrict parking. He stated the Building Commission allowed the Landing Commission to rent the land to the kayak business with no parking plan in place and shame on the Fire, police, BOH, and Selectmen. When concerns regarding the aqua protection were asked of the town, he said it was not acceptable to put in a new septic to be Title V compliant. He would like to see them use the plan with only handicap parking and require others to park at the Middle School, library and Head school. He feels WRWA should be the ones arguing that there should not be parking allowed instead of asking for the exception. He stated this is not a political process and should be open and transparent and the public landing should be available to the public. He wants there to be a compromise between the Neighborhood Assn. and WRWA. Mr. Coutinho stated during the previous hearing that the ZBA could not act because the proposed solution involved somebody else's property. He feels the same goes with the Town permitting use of parking at the Middle School. Mr. Vieira stated that he previously suggested to WRWA to seek the Town's permission and they did not stating they were only having parking for 8 cars. Mr. Vieira stated he is not against the WRWA that he is objecting this particular plan. He states WRWA should be applauded for their work but parking and septic is a problem. He states they should have to comply with Title V and doing so in a flood zone is only asking for problems. He feels the neighborhoods opinion should be worth something and that the proposal would be more detrimental to the land/town.

Marie Savettiere, 29 Drift Rd. abutter, says she's been trying to stay abreast of this plan since 2014 but has questions regarding the increased footprint and asks the ZBA to consider access, safety and cautions about setting precedent. Mr. Coutinho stated the ZBA does not set precedent as each application is looked at case by case. He also said the ZBA does not act on behalf of the BOH in regards to what is in the bump-out. He states our concern is the actual bump-out itself. Mr. Schmitt stated the bump -out is in place to be ADA compliant.

Sam Riley, 497 Old County Rd. abutter, considers the proposal more detrimental; stating it decreases property values. He did not appreciate the bullying tactics and the boundary challenges forced him to sell his home. He states the Landing Commission told him their only obligation was to their tenants. He is asking the ZBA not to approve the request as it will decrease public use of the land. (letter on file)

Kristie Furrow, 493 Old County Rd., state originally when the property was for sale, it was misrepresented in regards to parking. She feels the approval would be more detrimental to the land and asks that the ZBA reference the finding from April 1981 that states 'there should be no increase in size of the building' (letter and listing on file).

Quentin Sullivan 494 Old County Rd. abutter stated he bought his house 13 years ago because they loved the small, unique, undeveloped community. He feels this proposal will have a negative impact on traffic.

Bill Bernier 11 Reed Rd abutter asked how many cars we thought would be at the Head on Saturday when it was going to be 95 degrees out? Mr. Schmitt says on two separate occasions hes counted 41 and 46. Mr. Bernier made his point that he did not thinks WRWA was asking too much by wanting parking for 8 cars. He said people were asking about bathrooms being installed but in his opinion, they should have always been there. He stated he grew up there as a kid and they did much worse because there were not any bathrooms available. He agrees parking should be addressed but it should not be taken out on WRWA He feels parking should be eliminated on the south side of Old County Rd. because cars not pass when there are two parked on the street. He states this is only a problem on weekends, in the summer and nice days. He feels the building will just rot to the ground if we don't allow the owners to actually use the grounds.

Joseph Ingoldsby 469-471 Old County Rd. made several attempts to view the plans at Town Hall but was unsuccessful. He questioned the Open Meeting Law and why the plans were not available to abutters beforehand and said there is a lack of transparency. (letter on file)

Helen Souza 21 Drift Rd. is troubled by the use of the Head Garage. She said it will cause a negative impact on the community, encroach on public use areas, impede the view of some residents. There will be problems with access and use, it will decrease property values and she stated she does not consider the garage an 'eye soar' but a piece of history and character.

John Alden 192 drift Rd. is a member of the WRWA but is questioning the Landing Commission who he feels should be prohibiting access to the water. He asked if a structural engineer has certified that the walls can withstand the proposal. Mr. Schmitt said yes and that they had plan to repoint and restrengthen the masonry and that the second floor was capable of holding an automobile. He said the granite has lasted since 1710 and that it was not going anywhere as there

is no evidence of deterioration. Mr. Alden said they could only enhance at 49% of the cost of assessment which would restrict how much work they could do. He is additionally concerned with blocking Mr. Sullivan's view. Mr. Coutinho stated the ZBA makes decisions based on what's presented not what could happen. Mr. Allen stated he met with Dan Ledoux, WFD and he said they could not park next to the building as the Fire Dept needs room starting at the edge of the grass not the property line. He asked that the ZBA be diligent in verifying that with the Fire Dept. Mr. Coutinho stated that the Fire Dept already provide a letter stating it was adequate. Mr. Alden further stated the public landing should not be a commercial area and historical use should not go back more than 4 years. He is concerned that as WRWA progresses they will be using more of the public's land and is against bylaw 171-18-48. He also state if you beautify the area it will turn into a showplace and bring more congestion to the area. Speed limits, safety and parking are his concerns and that ConCom has not been consulted about the adverse effects. Mr. Coutinho said he did not know they discussed this with Conservation and stated the ZBA has no say, they would still need to go to the Conservation Board. He also asked Mr. Alden to clarify the public landing was not just for Westport but for Dartmouth residents too vs. the whole world. Mr. Alden provided pictures, descriptions and a copy of 1848-168-171 (on file).

Mike Sullivan, Selectman stated he believed the BOS voted unanimously to approve use of town property. He states he has listened to all the concerns but feels on all points, something is still being improved. He asked the Board for clarification on what points were being heard tonight. Mr. Coutinho read from the legal notice that ZBA bylaw 4.1.3 for alterations was being discussed not 4.1.2 regarding use of the structure.

WRWA Atty Dorothy Tongue stated they filed a letter in response to the Building Inspector directing them to that section of the code. She affirmed Mr. Coutinho asked at a previous meeting if the request was for a change of use. She affirmed that WRWA did not think they had to include after full disclosure of their intent and that it could be discussed under 4.1.3 if necessary. She also stated that this was an educational and charitable use under the Dover Amendment. Mr. Coutinho stated the Building Inspector was not aware of the use change and would not have sent that letter if he was (letter on file). Building Inspector, Ralph Souza says he wrote that letter based on a building permit application. Atty Tongue disagreed and said Mr. Souza was informed and that Mr. Coutinho was the one who said it could be discussed. Mr. Coutinho denied that and state the Dover Amendment was only applicable if the primary mission of the organization was education under the Article of Incorporation. Atty Tongue said it was a major focus of the group.

Selectman Sullivan said we need to provide clarity if we were discussing change in use or change in structure. The Chair reiterated the hearing was for alterations for proposed addition. Mr. Coutinho stated that the public was not informed it was a hearing for a change in use. Mr. Souza said he specifically wrote "structures or uses" because the structure was changing. He said this is the first he's hearing of a deck but he included the word 'use' in the letter to cover both and noted the applicant's letter never noted a change in use. Mr. Souza wants to discuss the use issue now. The Chair agreed with Mr. Coutinho that it was not advertised as such and cannot be discussed. Mr. Coutinho stated if the intent was for a change of use then why would Atty Tongue be trying to use the Dover Amendment. Ms. Salva stated if Mr. Souza specifically used the word 'use' then that should suffice and it should be heard now. The chair asked Mr. Souza if this was his intention and he confirmed. Mr. Coutinho stated he is looking out for the Town's best interest

if this were to go to court on appeal. Mr. Sullivan said the Board owes the applicant the heads up if they need to return for the 'use' portion. Mr. Coutinho said if they were using the Dover Amendment, they should withdraw without prejudice.

Selectman Sullivan said the BOS approved the change in use as they saw it as transitioning public space to a nonprofit whose mission was in line with the towns and found it be an appropriate use. He feels that everything is going in the right direction and that the proposal is not more detrimental; that this would be positive for the town. Mr. Coutinho asked what he meant when he said they 'approved' and he stood corrected and meant 'endorsed'. The chair asked the selectmen if he knew it was an aquifer protection area and he was unsure but state the information would not change his mind.

Mr. Alden stated Mr. Coutinho was correct that it should not be heard if it was not advertised as such. Mr. Schmitt said they did have discussions with ConCom but could not bring the plan before them until it was finalized. He said they also spoke with the BOH in regards to the waste water.

Mr. Emilita asked to continue the hearing to amend the application if the ZBA was not comfortable with it. Mr. Coutinho said he could not amend it because a public notice needed to go out. The only way to do that would be to withdraw without prejudice and reapply. Mr. Schmitt affirmed that they did wish to draw without prejudice.

Mr. Vieira stated this was a public hearing and was advertised and should be heard based on what they presented. He said he did not have much faith in them after the WRWA was unable to answer the question if this was an aquifer protection area during the last meeting. He asked the ZBA take into account he neighbors instead of what was convenient for the WRWA. Mr. Vieira also state they public should have access to the plans in advance to review and stated even the ZBA was unsure of what they were supposed to be hearing. Mr. Coutinho explained that we do not get the presentation prior to the meeting not do we know what they are going to present to the Board during the hearing. Mr. Vieira said the ZBA should do a better job and not let the WWA to continue to continue the hearing a third time because they are not prepared. He feels the ZBA should vote on what was presented and advertised.

Deborah Weaver said she thought we were including use the whole time and that parking was a requirement; that the WRWA could not make the decision to remove it from the plans. She reiterated they were trying to relocate because they are committed to the environment and the community and wants to be acknowledged as such.

Mr. Menard made a motion on the first application to allow WRWA to withdraw without prejudice. Mr. Kidney seconded and the vote was unanimous.

Mr. Menard made a motion on the second application for a special permit to continue the hearing to June 29, 2016 at 7:00 PM in the basement at Town Hall to accommodate the number of abutters. Mr. Kidney seconded the motion and the vote was unanimous.

Ms. Souza asked how many times one could continue a hearing. The Chair said there are no restrictions.

Mr. Ingoldsby provided an email to the Board from Ms. Weaver asking for his support while asking for it to remain confidential until the BOS voted (email on file).

The Chair read the request to withdraw the first app and continue the second with it noted that they wish for both hearings to take place at the same date and time.

Approval of Minutes – None.

Action Items – None.

Correspondence

An email was received from MEPA noticing a site visit to Brook Meadow Estates/Meadowbrook Farms. Informational only – no action required.

Other Business – None.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting – None.

10:00 PM

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals Meeting. Second by Mr. Menard. The Board voted 5 in favor, 2-absent (Lambert, Simmons).

Adjournment.

Respectfully submitted,
Heather Salva, Clerk