

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
JUNE 1, 2016**

**Members Present:** Christopher Graham, Chairman  
Gerald Coutinho, Vice Chairman  
Gary Simmons  
Larry Kidney  
Roger Menard  
**Members Absent:** Heather Salva, Clerk  
Donna Lambert

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

**Pledge of Allegiance**

**Chairman's Announcement** - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

**James Pavao – RE: An application request for a variance to allow owner to sell the vacant lot as a buildable lot. The parcel is shown on Assessor's Map 24, Lot 18AJ. The subject property is located at 222 Gifford Road, Westport, MA**

**Voting on Petition:** Christopher Graham, Gerald Coutinho, Gary Simmons, Larry Kidney,  
Roger Menard  
**Also Present:** Ralph Souza, Zoning Enforcement Officer/Building Commissioner  
James Pavao, petitioner  
Greg Denis (Land Surveyor), 246 Old Fall River Road - representing petitioner  
**Abutters Present:** None

Chairman Graham called the hearing to order with the reading of the Public Hearing Notice.

Mr. Denis stated he was approached by Mr. Pavao regarding a lot he purchased in 1992; when he purchased the lot (214 Gifford Road), there was a house on it; Mr. Pavao then took the house down and used the property as a garden.

Mr. Denis stated that in 2002, Surveyor Steve Roy did a plan of the property, which Mr. Denis presented. Mr. Denis explained how the various parcels of land around Mr. Pavao were acquired by him. Mr. Denis stated that in acquiring the various lots, it made Mr. Pavao's non-conforming lot, more conforming. Discussion ensued regarding the sale of the lots. Mr. Denis stated that in 2002, this plan was approved by the Planning Board. Mr. Denis stated that after purchasing the various parcels, Mr. Pavao now owned four parcels, which were unbuildable, so he just added them to his property.

Mr. Denis explained what parcel Mr. Pavao wanted to sell. Mr. Coutinho stated all these lots were in different names and eventually they got into whatever the current owners names are. Mr. Coutinho asked what the current owners names were. Mr. Pavao stated he owned them. Mr. Coutinho questioned a parcel under Noberta Pavao. Mr. Pavao stated that is his wife. Mr. Coutinho stated the Assessor's Record Cards show different owners. Mr. Graham stated that Lot A is in common ownership with Noberta and James Pavao. Mr. Coutinho stated the plan done in 2002 may not be current today, so what would be more accurate for ownership would be the Assessor's cards.

Discussion ensued regarding which lots were in common ownership. Mr. Denis presented a current survey he did. Mr. Pavao stated he wanted to sell the whole lot except for the lot that his house sits on. Mr. Coutinho asked if the three separate lots, from Mr. Pavao's house lot, constituted a buildable lot. Mr. Denis stated no.

Mr. Souza stated this matter has been brought to him twice, the second time with more added information. Mr. Souza stated that Lot 18AJ is the lot in question, which Mr. Pavao wants to sell; Mr. Pavao's house is located on 18AA; and 18AN (which is an L-shaped strip of land) originally came to him under a different name creating a buffer zone between 18AJ and 18AA. Mr. Souza stated that if 18AJ stood alone and not in common ownership, it could be buildable under the old standard of 100 ft. frontage and 20,000 sq.ft. Mr. Souza stated that under zoning, if different parcels are under a man or his wife's name, it is considered common ownership. Mr. Coutinho stated he had never heard of that. Mr. Souza stated it is found under MGL Chapter 40b. Discussion ensued regarding the division of lots. Mr. Pavao stated it is one of the oldest and biggest lots in the area. Mr. Coutinho then reviewed the Assessor's record cards and stated he did not see where the lot went from the previous owner back to Mr. Pavao. Mr. Pavao stated he did purchase it, he had the deed. Mr. Coutinho stated that perhaps the Assessors did not have that information in their records. Mr. Coutinho asked for a copy of the deed for the office records. Discussion ensued regarding the lots and their ownership.

Mr. Graham stated the application states that Mr. Pavao is looking for a variance; is that what is needed or should this be an Administrative Appeal. Mr. Graham questioned if this was a variance. Mr. Pavao stated all he wants to do is sell the land and he was willing to do whatever is needed. Mr. Coutinho stated that Mr. Souza has done the right thing, so we can't overturn his decision on an Administrative Appeal; this has to be something like a variance or do we try to reestablish lot lines.

Mr. Menard stated there are two questions: is this a buildable lot in today's standards and what is the impact of the property being in common ownership. Mr. Menard stated that assuming all the property shown in green is going to be sold, could they build on it. Mr. Souza stated, again, parcel AJ could have been sectioned out of the parcel if it were not in common ownership. Mr. Souza stated under the zoning standards back then (100 ft frontage and 20,000 sq.ft.), it would have been buildable; under today's standards, it is not. Mr. Souza stated this is the biggest lot in the area.

Mr. Souza stated the secret to this, is that the parcel should have been held by itself, not in common ownership. Discussion ensued regarding the common ownership.

Mr. Coutinho stated an Administrative Appeal, Special Permit and Finding are not appropriate. Mr. Graham stated the application does not state what articles and section the applicant is seeking relief from. Mr. Souza stated the relief would be for lot size and area. Discussion again ensued regarding the size of the lot. Mr. Coutinho stated on the application under the relief being sought, it states, "want to sell the vacant lot as buildable"; and under the Zoning Bylaw section, no article and section is mentioned. Mr. Souza stated he denied the request and assumed the applicant would be filing for an Administrative Appeal.

Mr. Menard asked does the Board have a right to do this; we don't have the right to overturn a MA state law. Mr. Coutinho stated he was not sure if this was legal. Mr. Coutinho stated we need guidance on this because he was not sure how to proceed with this application.

Mr. Coutinho asked Mr. Souza, if the applicant did not want to transfer ownership of the small strip of land located in the back, and retain that along with the other lot, would this become sale-able. Mr. Souza stated if it were in another name, it would be. Mr. Souza stated he can't separate the lot because all the lots are in the same names, even when he purchased the extra lot; all the lots became one contiguous lot. Mr. Pavao stated he had a buyer for the lot, but the interested party wanted a letter stating it was buildable. Mr. Pavao stated he did have the lot surveyed.

A lengthy discussion ensued regarding the application request and the denial from the Building Commissioner as to whether this is a variance or an Administrative Appeal. Mr. Coutinho stated this is complicated because Mr. Souza went by Town Bylaw and by State Law. Mr. Coutinho stated we know what we would like to do but we need to know how to proceed. Mr. Coutinho suggested that Mr. Pavao find a real estate lawyer to review this matter and then come back. Mr. Coutinho suggested that originally, the lot purchased from O'Dwyer (an undersized lot) was illegal because by doing such, O'Dwyer's lot, which was an undersized lot to begin with, became even more non-conforming and basically an undersized lot was sold.

Mr. Simmons stated that Lot AA is in Roberta's name only. Mr. Souza stated it did not matter, they are married and under state law, the lots were in common ownership.

Mr. Graham stated the applicant had options: withdraw without prejudice – which would allow the applicant to reapply with a new application citing what relief is being sought; or ask for a continuance – which is not a good suggestion because the Board does not have anything to go on, this is an incomplete application, it does not state the relief. Mr. Coutinho disagreed; the application and legal notice state the intent of the applicant. Mr. Menard stated the applicant could ask for a variance but the Board does not have anything to vary; the applicant needs to pull this back and ask for an Administrative Appeal and get a lawyer to prove that Mr. Souza is wrong; that is the only way this could work. Discussion again ensued. Mr. Pavao stated he was going to have to get an attorney to get this thing going. Again, Mr. Graham stated the options to the applicant.

Mr. Coutinho asked Mr. Souza to present a copy of the MA State Law which refers to common ownership of property by a husband and wife.

At this time, Mr. Pavao decided to ask for a withdrawal without prejudice and signed a request to that effect for the Board.

**Motion** made by Mr. Simmons to allow withdrawal without prejudice. Second by Mr. Menard.  
The Board voted unanimously in favor.

The hearing is closed at 8:25 PM.

**Approval of Minutes** – None.

**Action Items** – None.

**Correspondence** – None.

**Other business**

**Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting**

**8:25 PM**

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

**Adjournment.**

Respectfully submitted,  
Diane Pelland  
Principal Clerk to the Zoning Board of Appeals

**APPROVED:** Heather L. Salva, Clerk