

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
AUGUST 26, 2009**

**Members Present:** Clayton M. Harrison, Chairman  
Gerald Coutinho, Vice Chairman  
Kendal Tripp  
Kimberley A. Fernandes, Alternate  
William Wyatt, Alternate

**Absent:** Christopher J. Graham  
Donna Lambert, Clerk

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 02790.

**MANUEL ALEXANDRE** – RE: Continued Public Hearing on an application for a variance to seek relief from the Westport Zoning Bylaw Article 4.0.1 which prohibits commercial activities in a residential district. The property is located at 111 Main Road, also known as, Assessor's Map 67, Lot 23.

Sitting on petition: Harrison-Coutinho-Tripp-Fernandes-Wyatt  
Attending: Ralph Souza, Building Inspector/Zoning Enforcement Officer  
Attorney Brian Corey, Jr. representing applicant

Abutters present: None.

Chairman Harrison opened the continued hearing at 7:00 P.M.  
Attorney Corey stated for the record, that he was not involved in the original application. Attorney Corey stated his client purchased the property in 1986, at which time the Building Inspector was Vernon Whitehead. Attorney Corey noted that under the Table of Uses (page 105) of the Zoning Bylaws, this is an allowed use. In 1988, the Building Inspector ordered a "Cease and Desist" but somewhere along the way, an agreement was reached. While John McNally was Building Inspector, a question was posed by the then Conservation Commission Chairperson Tanya Ryden and then in 2006/2007 an opinion was issued. Attorney Corey stated he disagrees with Sections 4 and 11 of the bylaws. Attorney Corey stated his client contends that activity as a tradesman is allowed and under the Town's General Bylaws, Section 1101.2 this is allowed. This is much like a plumber, farmer or fisherman. Mr. Alexandre is a licensed septic system installer. A "Cease and Desist" was issued but from 1997 to 2004 my client held a Soil Permit, until an inspection by then Conservation Commission Agent Anne Phelps. The agent said Mr. Alexandre did not maintain a 25-ft. buffer zone. Attorney Corey asked the Board to take into account, the poor construction of the bylaw with the exception of Section 1101.4 Attorney Corey noted that the Town Council's opinion does say that soil storage is a denied use. Attorney Corey stated that due to a lack of zoning enforcement back in 1988, unfortunately, Mr. Souza has had to make some very hard decisions. Attorney Corey asked the Board to allow Mr. Alexandre to continue on with his trade.

Mr. Coutinho asked if Mr. Alexandre was still continuing to process or screen material and if any equipment was onsite.

Attorney Corey stated he was told that his client can't screen or process, just stockpile.

Attorney Corey did agree that the rock crusher and screening is not allowed.

Mr. Wyatt noted that most of the complaints was from noise.

Mr. Souza stated yes, the noise of screening, moving material around and machinery operating.

Mr. Coutinho stated the abutters that were present at the last meeting had problems with the noise and shaking of their dwellings. Mr. Coutinho stated there should be a distinction between processing and storing.

Attorney Corey stated the processing can be done off site. Attorney Corey stated it was a rare occurrence that Mr. Alexandre is onsite at 111 Main Road; his client leaves in the morning and returns in the evening.

Mr. Coutinho stated that the Town Bylaw says a soil permit won't be granted without a variance granted by the Zoning Board of Appeals.

Mr. Harrison said the contention of Council is this is a general contractor, who works by himself.

Attorney Corey stated yes, he has no employees.

Mr. Harrison stated that Mr. Alexandre needs to be registered with the Town Clerk; he also has a variety of equipment and materials on the property. At the last meeting, Mr. Alexandre stated it would take a year at least to process and made available to sell. Mr. Harrison stated he would not compare this to a farmer. Mr. Alexandre processes stone because it is valuable. According to the past Building Inspector's opinion, this is not within the guidelines.

Mr. Coutinho stated in his opinion, are they saying under a tradesman this is not allowed.

Attorney Corey said the bylaw has a broad definition of tradesman but I agree that my client has over stepped his bounds with this.

Mr. Coutinho stated that when one abutter to the north said he has lived on the property, along with his family, for over 100 years and he can't stand the noise, my contention was the screening of the material and the literal shaking of his house.

Mr. Harrison stated that with a tradesman, no manufacturing is allowed.

Mr. Coutinho said he made the argument in the past, that we allow a plumber to bring pipe to his property with no "Cease and Desist" orders. A carpenter has material on his property, just like lobstermen store pots. Mr. Coutinho's argument is that it is more of a nuisance to look at; Mr. Coutinho equated with legal. Mr. Coutinho stated that in his mind, this is like a landscaper but Mr. Alexandre should not have processing onsite.

Mr. Harrison stated that manufacturing is separate from mining; the bylaws in Town deal with stockpiling and Conservation controls stockpiling.

Attorney Corey stated that Section 11 – 1101.2A – Section 1- application review – is geared towards excavation, with nothing toward storage and materials.

Mr. Coutinho stated the Zoning Board of Appeals could not waive anything in the General Bylaws, only the Zoning Bylaws.

Mr. Souza reminded Attorney Corey, that two "Cease and Desists" were ordered by the Building Inspectors.

Mr. Harrison stated the Conservation Commission sent letters to address the fact that no Soil Permits had been issued. According to the Soil Regulations, all stockpiling is not allowed in residential areas.

Attorney Corey asked that the Zoning Board finds his client as a tradesman under the bylaw, which would allow him to continue.

Mr. Wyatt stated that zoning bylaws are designed to protect the applicant and abutters.

Mr. Wyatt asked if the abutters objected to the noise or the processing of materials and the noise of trucks going in and out.

Mr. Souza stated the abutters stated the screening of loam and the machinery running.

Mr. Wyatt asked if restricting the hours would remedy the matter.

Mr. Coutinho stated that if Mr. Alexandre was found to be a tradesman, nothing in our bylaws would legally allow the Board to put restrictions, however, could some kind of agreement be reached with the owner.

Mr. Wyatt stated that normally, tradespeople work from 9:00 AM to 5:00 PM; but someone moving rocks around especially at 7:00 AM on the weekend, is a problem.

Mr. Souza stated there was a general bylaw for noise only to be during 7:00 AM to 9:00 PM.

Mr. Harrison stated the issues are stockpiling, manufacturing of material and a zoning issue. Over the years, this business has grown.

Mr. Souza stated that Mr. Alexandre is conducting a business, bringing in and taking out material, as a transfer station. Mr. Souza stated he suggested that Mr. Alexandre find a site zoned for commercial use. Mr. Souza said he had no problems with Mr. Alexandre storing his trucks on the property but no processing of materials, selling materials and moving the materials around. An example of retail is that masons buy stones onsite.

Attorney Corey stated that the file is devoid of complaints.

Ms. Fernandes stated that at the last meeting, one neighbor was concerned with the increase of size of the business and the fact that it may grow into a quarry type business.

Ms. Fernandes stated she thought there has been a problem in the past with Mr. Alexandre staying within the boundaries he has.

Mr. Harrison stated this operation has become a nuisance due to it growing bigger and bigger, in addition to the processing.

Mr. Coutinho stated that if this is the case, he did not go along with his own argument. If Mr. Alexandre is selling to retail sales, then it is a business.

Attorney Corey stated the Board needed to define what Mr. Alexandre can and can't do; perhaps restrictions can be placed for the retail part.

Mr. Harrison stated that Mr. Alexandre has already indicated what he is doing on the property.

Mr. Coutinho stated the scope is way beyond a reasonable landscaper. The Town Bylaw does not address reasonable levels however.

Ms. Fernandes agreed that at one time, Mr. Alexandre may have been a landscaper but now he is beyond that point.

Mr. Coutinho stated the Building Inspector/Zoning Enforcement Officer saw the entire project and procedures first hand on the property with Mr. Alexandre. At this time, Mr. Alexandre is allowed to bring in materials but he can't bring in people for retail and no processing of materials.

**Motion** made by Mr. Coutinho to conduct an onsite visit to 111 Main Road on Saturday, September 26, 2009 at 7:00 P.M. Second by Ms. Fernandes. The Board voted unanimously in favor.

**Motion** made by Ms. Fernandes to continue this hearing to Wednesday, September 30, 2009 at 7:00 P.M at the Town Hall. Second by Mr. Wyatt. The Board voted unanimously in favor.

**CHRISTY MALTAS** – RE: Public Hearing on an application for a variance to add a 16' x 16' addition that will extend from the side of the house resulting in a 5 ft. side yard setback. Relief is sought from Westport Zoning Bylaw Article 7, Section 7.6.2 The property is located at 217-W Tickle Road, also known as, Assessor's Map 21-A, Lot 32.

Sitting on petition: Harrison-Coutinho-Tripp-Fernandes-Wyatt  
Attending: Christy Maltas, owner/applicant  
Jim Sharples, 35 Watuppa Road, applicant's contractor  
Ralph Souza, Building Inspector/Zoning Enforcement Officer  
Abutters present: None.

Chairman Harrison opened the hearing with the reading of the Public Hearing Notice at 8:22 P.M.

Mr. Maltas stated he wants to construct a 16' x 16' addition. The property line side setbacks are 3 ft. The lots in the area are very small and all the lots in that area don't comply with zoning.

Mr. Coutinho asked if Mr. Maltas if he considered the 250 ft. rule; the bylaw allows that the set backs of a building need be set back no more than the average of the set backs of the buildings next to them within 250 ft. Mr. Coutinho stated it is an average of the surrounding properties.

Mr. Sharples stated the proposal doesn't meet the 10-ft. setback but it does meet the 250-ft. statute on each side. Mr. Sharples stated he checked the setbacks of each of the properties that abut and they are all small and don't meeting zoning, they are all non-conforming.

Mr. Souza stated the area is all small lots; it is a congested area, an engineer could make the determination for Mr. Maltas.

Mr. Coutinho asked if Mr. Maltas has considered other options such as going half the difference and going longer along the side of the house.

Mr. Sharples stated the addition is for a mudroom in order to hold extra stuff that can't fit in the house; the house is very small.

Mr. Coutinho asked if there will be problem with the Board of Health with this proposal. Mr. Sharples stated there is no problem with the proposed addition due to the entrance to the home is through the mudroom. Mr. Sharples stated this will never be an area for a bedroom.

Mr. Coutinho stated in his personal view, he did not like setbacks less than 8-ft. due to emergency / public safety reasons.

Mr. Maltas stated that there is 9-ft. of access on the northwest side of the house that will remain. There are no structures to block this access. Mr. Maltas said he had no objection to keeping this side open. Mr. Maltas stated he did not have many options because there is a well toward the pond side of the house and a tight tank in the front yard. The addition is for the east side of the house.

Mr. Coutinho in summarizing the application stated as for the hardship aspect, the applicant don't know if the 250-ft. comparison could be achieved and the applicant is considering the addition to the east side of the property as the only viable option because of the locations of the well and tight tank limits construction; the applicant is therefore asking for a 5-ft. variance. Mr. Coutinho asked Mr. Maltas what he considered a three season's addition.

Mr. Sharples stated the room would not be heated.

For the record, Mr. Harrison read a letter of submission received from Mr. Maltas stating that the lot size was 8,360 sq.ft., the addition would be 16' x 16', and the nearest neighbor was 3-ft. from the lot line.

Mr. Coutinho noted there were no abutters present which is a good sign that they are not against this petition.

Mr. Kendal Tripp stated that in the past, the Zoning Board has granted cases similar to this proposal.

Mr. Harrison stated the case maybe similar but we don't have engineering proof.

Mr. Coutinho asked if the Board was going to make a decision based on generality.

Ms. Fernandes stated that from experience, an engineered plan was always the best.

Mr. Harrison stated that the hardship was not more detrimental to the area; there are homes in that area in a similar situation; the hardship is that the location of the addition is due to it being allowed in only one place on the property. This surrounding area is comprised of undersized lots.

Ms. Fernandes stated that she is familiar with the area and is very comfortable with this petition.

Mr. Souza stated he has no problem with this proposal but he will require an "as-built" plan to be submitted when Mr. Maltas applies for the building permit.

**Motion** made by Mr. Coutinho to close the hearing. Second by Ms. Fernandes. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to approve the requested variance due to the hardship of the size and shape of the lot, the location of the well and the septic tight tank; approval of this variance does not derogate from the intent of the bylaw. The following conditions are required:

1. The addition to the residence will not be heated.
2. The Northwest Boundary (reportedly 9-ft.) is not to be infringed upon by non-movable structures or plantings; leaving a safe egress for any safety personnel to access.
3. This approval is subject to an "As Built" plan being drawn by an engineer and being submitted to the Building Inspector/Zoning Enforcement Officer. The plan is to clearly show the setback of the addition to the survey and marked on the southeast boundary line with no less than 5 ft. from the boundary line.

Second by Ms. Fernandes. The Board voted unanimously in favor.

**Correspondence Received**

1. Memo received from the Board of Selectmen regarding New Employment Checklist Policy. No action was taken by the Board, this was informational only.

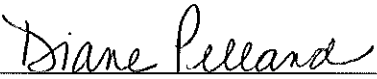
**Discussion Required**

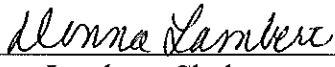
1. New revised form of "Notice of Decision".  
No action taken by the Board, this will matter will be discussed at a future meeting.

**Motion** made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting at 10:01 P.M. Second by Ms. Fernandes. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,

  
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Diane Pelland, Principal Clerk  
to the Zoning Board of Appeals

**APPROVED:**   
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Donna Lambert, Clerk