

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
SEPTEMBER 21, 2011**

Members Present: Clayton M. Harrison, Chairman
Christopher Graham, Vice Chairman
Donna Lambert, Clerk
Gerald Coutinho
Heather Salva
Gary Simmons

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.

Mr. Harrison stated that with the resignation of Ms. Fernandes, the Board needed to vote a new Clerk.

Motion made by Mr. Graham to appoint Donna Lambert as Clerk. Second by Mr. Coutinho. The Board voted unanimously in favor.

Antonio & Darlene Arruda - RE: A public hearing on an application request by Antonio & Darlene Arruda, 524 Sanford Road seeking a Finding to allow for the sale of beer and wine on the premises. The property is located at 526 Sanford Road. The property is known on Assessor's Map-23A, Lots 314 & 316.

Sitting on petition: Clayton Harrison, Gerald Coutinho, Christopher Graham, Donna Lambert and Gary Simmons.

Attending were: Antonio Arruda, owner/petitioner
Lino Rego, owner of Janet's Country Store
Joseph Rego, co-owner/employee of Janet's Country Store
Ralph Souza, Building Inspector / Zoning Enforcement Officer

Abutters present: Ronald Santos, 2 Faulkner Street
Thomas Hancock, 10 "D" Drive
Leo St. Onge, 135 Davis Road
Paul Schmid, 236 Fisherville Lane
Keith Almeida, 510 Sanford Road
Pauline St. Laurent & Kathleen Mayo, 532 Sanford Road
Luci DeSousa, 40 "L" Drive
Allan & Lori Rencurrel, 515 Sanford Road
Gerald Alix, 465 Sanford Road
Louis & Kathy Carreiro, 535 Sanford Road
Attorney Gerald Johnson, representing the Carreiro's
Jane Owen & Susan Strauss, 511 Sanford Road
Kevin & Lori Danis, 527 Sanford Road

Mr. Arruda stated the premises are being leased to Mr. Lino Rego, co-owner of Janet's Country Store. Mr. Rego stated he has been in the retail business for 37 years. The store will employ three local employees. Mr. Rego stated the addition of beer and wine is for the convenience of his customers, it is not meant to be the main item being offered. Mr.

Rego stated there have been upgrades to the property. It used to be three different businesses but it is now one. The property has been cleaned up and given a new appearance and will continue to be upgraded. All town codes have been met. Mr. Rego presented the Board with pictures of the property for the permanent record. The hours of operation will be 6:30 AM to 8:00 PM with large deliveries being after 7:00 AM; he has no control over the early morning delivery of newspapers, although that is only a van pulling up and tossing the newspapers on the property. There will be soft-impact lighting on the property and security lighting at night. Mr. Rego stated he will be responsible in making sure the property is checked for litter and trash at least three times a day. Mr. Rego stated he is not requesting a full liquor license because he is limited to space. Mr. Rego also presented to the Board for permanent record, a list of approximately 48 signatures supporting his application. Mr. Rego stated the opening date is set for Sunday, September 25, 2011. Mr. Harrison stated this property was before the ZBA in October, 2006; there is a list of allowed usages at this property because it is located in a residential area and it is a prior existing non-conforming use; as for the actual license, Mr. Harrison stated that is applied for with the Board of Selectmen, along with all other required permits being applied for to the appropriate department. Mr. Simmons asked where the check-out was located; Mr. Rego referred to the submitted drawing and the pictures. Mr. Rego stated there are security cameras, which were requested by the Westport Police Dept. Ms. Salva asked how the selling to minors would be handled. Mr. Rego stated there is a system in place, it is a device attached to the register. Mr. Rego stated he was in law enforcement for 17 years. Mr. Josh Rego stated the license scanner will be implemented and if a license is scanned and it shows up bad, there is no sale and the police are notified; this eliminates human error.

At this time, Mr. Harrison opened the hearing to abutter questions and input.

Mr. Ronald Santos stated he has known Mr. Rego for a number of years and his character is flawless; he is real straight shooter.

Mr. Thomas Hancock stated the Arruda family has spent a great deal of money upgrading the property; it is the best it has ever looked. Mr. Hancock stated he supported this business and the addition of beer and wine will help give this business an opportunity to start off with a good start. Mr. Rego is a good man with an upstanding character.

Mr. Leo St. Onge stated that Mr. Rego is an honest, good and trustworthy person; if he says something, he will do it.

Mr. Paul Schmid speaking on behalf of Mr. Rego stated, you can depend on him to do as he says he will. Mr. Rego is a person of unquestionable character.

Attorney Gerald Johnson stated he was representing Mr. & Mrs. Carreiro of 535 Sanford Road, where they have lived for the last 36 years. Attorney Johnson stated this petition does not fit the criteria of a variance because of it being located in a rural/residential area and no hardship being demonstrated. The only advantage to this petition is to maximize the revenue of the owner. Under MGL Ch. 40A, Section 10, what effects will happen to the neighborhood such as traffic, due to a more intense use and more detrimental by way of public safety and sales to underage patrons. One of the impacts, if this is allowed, will be a drop in property value. Within a three-mile radius, there are seven beer & wine liquor licenses. Attorney Johnson stated back in 2006, this Board denied the variance for beer and wine, today, my clients are asking that this Board deny again. Mr. Coutinho stated for the record, this is not an application for a variance, it is for a finding; this is an expansion of a pre-existing non-conforming use and the Board has to look at whether this new use will be more detrimental; thus we are not confined to demonstrating a hardship;

if no such use was there prior, it would be a variance. Mr. Rego addressed the traffic issue and stated that for the last seven years, he has worked at a convenience store located on Route 177, there was not much change to that store when they added beer and wine; maybe in the summer there was a little more, but it was people going to the beach. Mr. Rego stated this business is not based on beer and wine, it is based on sandwiches, coffee and groceries. The addition is just to offer my customers one less stop before going home, if the need arises. As for property values, my own house is worth a lot less due to the economy and that is the same fact all over; if anything, with all the upgrades, 526 Sanford Road is now an asset to the neighborhood. Mr. Carreiro read a summary letter and submitted to the Board a petition containing 34 signatures of people opposed to this application. Attorney Johnson stated this is a non-conforming use; you don't go out of your way to increase non-conformance.

Mr. Keith Almeida stated he felt that bringing beer and wine into the neighborhood would be more detrimental; a lot has changed in ten years. Mr. Almeida stated he wished the Rego's the best in their new business but he does not agree with it being in his backyard.

Ms. Kathleen Mayo stated the property has never looked so good. As for the kids seeing alcohol, they see more on television, billboards, sports venues and even family cookouts, so that is not a good excuse. Ms. Mayo wished the Rego's the best of luck.

Luci DeSouza stated she works in a convenience store where a lot of kids come in all the time, there is no problem with having beer and wine.

Jane Owen stated they did not need anymore beer and wine establishments, the Town was infested with them and there is the possibility that they will apply for a full-liquor license; this affects the quality of life.

Kevin Danis stated that he has read the minutes from the last hearing, and this won't help the neighborhood; it won't enhance the area.

Susan Strauss stated the north-end of Town is over-served with alcohol; there are many places within a three-mile radius; this will pull the neighborhood down.

Lori Danis stated her sons take the bus at the corner of Sanford Road and "N" Drive and she doesn't feel that adding beer and wine would be beneficial except to the owners.

Mr. Josh Rego stated that beer and wine ads may affect young people but beer and wine is accepted in today's society; some people abuse and some people don't even drink. Just look at who sponsors TV sport games. Mr. Rego stated the aim of his parents store is not to have a negative effect on the neighborhood but to be part of it. As for bus stops, we are not luring in any kids to buy something they should not be buying; we are taking preventative measures to ensure legal sales. Mr. Rego stated his father has invested a lot of time in this venture and as for property values, they are down for everyone. The addition of beer and wine will not substantially decrease property values. Mr. Rego stated that he understood this is a democracy, where everyone is allowed to speak; this is America, where we all came from a boat and were allowed a chance to become successful; we are a respectful family who will run a respectful business.

Mr. Thomas Hancock stated he still supports this request; the property is being referred to as a beer and wine store but could we also refer to it as a cigarette store, a coffee store, a newspaper store. Mr. Hancock stated he did not think this was a detriment to the neighborhood, there was no drinking on the premises; it is simply a customer coming into the store, picking up a couple of things they needs and perhaps buying a six-pack or a

bottle of wine and bringing it home to consume. The Town needs to support small businesses.

Ms. Luci DeSouza stated she supports this application and feels it is a good thing for the neighborhood.

Mr. Louis Carreiro stated he is not questioning Mr. Regos' character, he is questioning why his quality of life should be destroyed. The liquor store down on Sanford Road has caused more problems and this will too. Mr. Carreiro stated he was asking the Board to look at the evidence and give the abutters a reason why they should allow this.

Mr. Rego stated he understood the concerns of the abutters. As far as single-family residences in Westport, over 90 percent are, so you will always be in a residential area. Mr. Rego stated he sent a letter out to everyone in the neighborhood and invited them to contact him with any questions, concerns or comments. One call he received was against his proposal but they did talk for some time. Mr. Rego stated he is only trying to give his patrons a chance to get another product at his store without having to go to another location; in all fairness, the letter did not include the mention of beer and wine but when someone did question us, we were forthcoming. Ms. Salva asked if there would be the posting of beer signs on the property; Mr. Rego stated no. Ms. Salva asked about loitering on the property; Mr. Rego stated he would install signs; as for the road-side sign, the bottom half is covered pending the approval from the MA State Lottery Commission and the approval of a beer and wine license.

Mr. Gerald Alix stated that the bus stops at every corner, and as for extra traffic, he doubts it; he does support this store and will frequent it; as for the upgrades, they have done an outstanding job on the property.

Ralph Souza stated there is a new parking lot and newly renovated building. The parking spaces are determined by the square footage of the building. There is no layout plan of the lot on file but it was redone, remarked and made handicap accessible. The property is in compliance and a certificate of occupancy was issued. The use of the property is still for a retail establishment. Mr. Souza stated that in his opinion, there will be more traffic received on Route 6 & 177 than at this location. Mr. Souza would not deem this petition to be more detrimental to the neighborhood. Ms. Salva stated the second handicap parking was not correct; Mr. Rego stated he was waiting for a new sign. As for the lights, he will work with the neighbors.

Mr. Harrison stated that the owner has spent a lot of money in order to lease to Mr. Rego and Mr. Rego should understand that this is not a case of looking at the lessee, nor is it a case of questioning his character.

Ms. Susan Strauss stated there was a fire at this property and that is why the store closed, it was not intended for this proposed new use.

Mr. Souza stated that originally, the property contained three units, now with the renovations and modernizations; it is now one store, one unit which he has no issues with.

Motion made by Mr. Graham to close the hearing at 8:08 PM Second by Ms. Lambert. The Board voted unanimously in favor.

Discussion

Mr. Graham stated he wanted to clarify this hearing. It is to arrive at a finding that the addition to allow the sale of beer and wine is not more detrimental to the neighborhood. Mr. Simmons stated he did not see a big detriment and he does not see the traffic flow

changing. Mr. Coutinho stated he agreed with Mr. Simmons, there are a multitude of beer and wine sellers in the area, and so in regards to additional traffic being generated at an already established business, he does not see it happening.

Mr. Coutinho stated that times have changed and the building has changed. It has become more and more common practice for the small convenience store to carry beer and wine today and the expansion of the availability into that area would make it less likely for people to make a special trip to get beer and wine at this location. Mr. Coutinho was not convinced this would increase traffic. The Local Licensing Authority has to determine whether to issue a license or not. The Zoning Board needs to look at the changes; the Board can make it personnel to the lessee, so there won't be a change. Mr. Coutinho stated he would be hard-pressed to prove this to be more detrimental. As for deliveries of beer and wine, the hours of deliveries, where and when could be regulated because under a Finding, the Board can impose conditions such as hours and lighting. Mr. Harrison asked what has changed since 2006; it is the same property owner, just a new lessee.

Mr. Coutinho stated one change is that there are fewer businesses on the property and less traffic; it was three uses and now it is down to one use.

Ms. Lambert stated she understood where parents were coming from and there is always the possibility of the applicant coming back before zoning for an expansion of use; she agrees that this is a residential area but you can buy anything anywhere today. By removing children from such things as beer and wine, it may only encourage them to explore on their own. Ms. Lambert questioned how many other bus stops were near liquor establishments.

Mr. Harrison asked for a clarification of hours. Mr. Rego stated the operational hours are Monday through Saturday 6:30 AM to 8:00 PM and Sunday 7:00 AM to 7:00 PM.

Mr. Coutinho stated the store owner arrives at 5:30 AM and we have little control over the newspaper deliveries. Mr. Simmons stated the owner did however have control over the liquor deliveries. Ms. Lambert stated that something must have been corrected at the property since 2006 because the concerns that were voiced then were not being voiced here tonight. The signage falls under the Zoning Enforcement Officer and the rules and regulations for the beer and wine fall under the Local Licensing Authority (Board of Selectmen) and the ABCC; parking is based on the retail space. Mr. Coutinho agreed that the control of the beer and wine was under the control of the Board of Selectmen.

Vote Taken

Motion made by Mr. Graham that the Board finds the addition of beer and wine sales to the pre-existing non-conforming use being added to the use list for this property is not substantially more detrimental to the neighborhood. The hours of operation will be Monday – Saturday 6:30 AM to 8:00 PM and Sunday 7:00 AM to 7:00 PM. The lighting will be extinguished during non-operational hours with the exception of security lighting. The signage will be no more than what is pre-existing. No alcohol related signage in the windows of the establishment with the exception of the road-side sign. The Board finds that it is not more detrimental because the property has down-sized from three businesses to one business, thus there will be no increase in traffic. Hours of deliveries shall be during hours of operation with the exception of newspaper deliveries. There will be placement of “No Loitering” signs on the property. Second by Mr. Coutinho. The Board voted unanimously in favor.

Correspondence

1. **Motion** made by Mr. Coutinho to send a letter to the Board of Selectmen advising recommendation of a denial to return the entire filing fee based on the facts that the applicant was advised prior to the filing, Town Counsel advised the Town was under no obligation to return the filing fee due to incurred normal expenses such as clerical and advertising and the applicant chose not to seek legal counsel before filing.
Second by Ms. Lambert. The Board voted unanimously in favor.
2. No action taken.
3. No action taken.
4. No action taken.

Approval of Minutes

None.


Other Issues

None.

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting at 9:20 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