

**BOARD OF APPEALS
REGULAR MEETING MINUTES
NOVEMBER 04, 2009**

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

Absent: Christopher J. Graham

Also present: Ralph Souza, Building Inspector/Zoning Enforcement Officer

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 – The continued public hearing on an application for a variance to seek relief from the Westport Zoning Bylaws 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-Lambert-Tripp-Fernandes
Attending: Attorney Brian Corey, representing the petitioner
Abutters: None.

Mr. Harrison opened the continued hearing at 7:00 P.M. Mr. Harrison stated that an onsite was conducted on September 26, 2009 with members Harrison, Coutinho, Lambert, Fernandes, Tripp and Wyatt present. Mr. Harrison asked Attorney Corey for an update on this matter.

Attorney Corey stated the screening machine has been removed and dismantled and is up for sale. There is no new additional information to present to the Board at this time.

Attorney Corey stated the storing of materials is incidental to Mr. Alexandre's occupation. Attorney Corey stated that his client was not seeking a variance but asking for a finding at this time. Attorney Corey said his client is a single proprietor and onsite is geological material incidental to his trade. The large equipment is brought to and from his work sites; most of his business is offsite and he only parks his trailer overnight.

Mr. Coutinho stated the April 30th letter from the Zoning Enforcement Officer indicated everything had to be removed from the site. If the Board goes along with Attorney Corey's argument, this is a tradesman. We would have to overturn the Zoning Enforcement Officer's decision as far as materials and equipment onsite and to uphold the decision to remove the screening operation.

Mr. Souza stated he had no problem with the trucks but the manufacturing of soil and rocks has to stop.

Mr. Coutinho stated that personally, he doesn't see a difference to others who work out of their homes like a carpenter, plumber, electrician, etc. These tradesmen store materials at their homes also. There is not a lot of difference in the concept. In my opinion, he has a right to do this except for the screening of materials and this should be treated like any other landscaper. Also, he does not have people coming in off the street to buy materials. Mr. Wyatt stated that he went along with Mr. Coutinho except for the stockpiling, which requires a Soil Permit from the Conservation Commission. The operation should be permitted except for the stockpiling which violates zoning.

Attorney Corey stated that Ms. Coates, Conservation Agent, made an admirable attempt under 11.1.2 but there are exemptions. The majority of the bylaw does not cover stockpiling or keeping of those items, it deals with soil removal. Attorney Corey stated this is commercially related, yes; but the bylaws allow. If this stands true, every farmer who has a stockpile would be engaged in controversy with Ms. Coates's determination. Mr. Coutinho noted that to get a Soil Permit, the applicant needs to get a variance from the Zoning Board of Appeals. Attorney Corey stated the bylaw is poorly written. Mr. Coutinho stated there is a difference between a lumberyard, the lumber is there and being bought by customers; but with Mr. Alexandre, the material is there but he is not selling it but instead using the materials for offsite jobs. Mr. Coutinho stated that most of what the Soil Board deals with, is excavating or removal of soil from a site. Mr. Harrison stated that a legal opinion received from Attorney Randazzo does refer to our bylaw, indicating a variance is needed for a Soil Permit. The letter being referred to was dated June, 2007 to the Conservation Commission/Soil Board. Attorney Corey said if a variance is not required because it is allowed, then without a variance the point is mute. Mr. Harrison said that under the Zoning Bylaw, stockpiling in a residential/agricultural district is restricted. Mr. Coutinho stated the attorney was looking at this with a very narrow point of view and not looking at the use of a tradesman living on the premises, which Mr. Alexandre does and how he falls under any other artisan. Ms. Fernandes asked if stockpiling was the Boards' consideration at this time. Mr. Harrison stated that a cease & desist from April, 2009 specifically addresses piles of rock, rock material, etc. Mr. Souza stated that previously Mr. Alexandre had a Soil Permit but did not renew it. Attorney Corey stated June, 2006 was the last time a Stock Piling Permit was issued. Ms. Lambert stated that during the onsite, the main issue was the manufacturing of materials. Mr. Coutinho asked in accordance with the bylaw, do we consider this man to be a tradesman or referred to under other artisan such as a plumber, electrician, carpenter, etc. Mr. Harrison stated there is some disagreement and some agreement with the Zoning Enforcement Officer's decision. Attorney Corey agreed his client must cease manufacturing activities but other activities can be considered part of his trade operation. Mr. Harrison stated at the onsite visit, all the points were brought home. It was also pointed out that some issues needed to be addressed with the Conservation Commission. Ms. Lambert stated that in the Zoning Enforcement Officer's letter he is specific to commercial storage activity. Mr. Coutinho clarified that as long as stored material is for his use only. Mr. Coutinho stated that in his own opinion, if Mr. Alexandre had not gotten so big and the noise from his machinery, this would not have been an issue. Mr. Alexandre must think about his neighbors. In reality, the neighbors must not like it but we have to go by our bylaws.

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

Findings:

1. Applicant does not have a retail operation and all materials stored on the property are for applicant's own use on his own jobs.
2. The screening of soil or other material can be construed as a manufacturing operation that is prohibited by our zoning bylaw 4.0.1.B.2

3. That the occupation of landscaper and excavator, as well as septic system installer, would be considered to be a tradesman or other artisan as defined in the subject bylaw.
4. Although application was for a variance, it was determined that no variance consideration is applicable.
5. The applicant is a resident of the subject property and the sole operator of that business with no regular employees.
6. No business that requires continuous employment is being carried on at this site.
7. Storage of materials on the subject property are incidental to the applicant's occupational needs.

Conditions:

1. Manufacturing of materials, e.g., screening soil, is not allowed by zoning bylaw.
2. No retail sales by zoning bylaw.
3. Based on information given by applicant during the onsite visit, the equipment is restricted to the equipment that is actively being used for the performance of applicant's operation.

Votes taken:

1. **Motion** made by Mr. Coutinho that the Board of Appeals uphold the Zoning Enforcement Officer's letter dated 04-30-09 in regards to the Cease & Desist of soil screening on the subject property/premises. Second by Ms. Lambert. The Board voted unanimously in favor.
2. **Motion** made by Mr. Coutinho that the Board of Appeals overturn the Zoning Enforcement Officer's letter dated 04-30-09 in regards to the storage of piles of soil, rock materials and construction equipment (trucks, trailers, backhoes, bobcats). Second by Ms. Lambert. The Board voted unanimously in favor.
3. **Motion** made by Ms. Lambert that a limit be placed on the equipment onsite. Second by Mr. Coutinho. The Board voted 1 in favor, 4-opposed (Harrison, Coutinho, Fernandes, Tripp).

*Kendal Tripp left the meeting at this time.

GERALDINE H. SCHIFFMAN – Public Hearing on an application for a variance to seek relief from the Westport Zoning Bylaws Article 7, Section 7.6.1 front yard setback requirements. The property is located at 1380 Drift Road, also known as Assessor's Map-56A, Lot-79.

Sitting on petition: Harrison, Coutinho, Lambert, Fernandes, Wyatt
Attending: Sean Leach, SITEC Engineering
Abutters: Michael Sullivan, 1380-M Drift Road
Samuel Mundel, 1380-G Drift Road

Mr. Leach gave a brief history of the property located at 1380 Drift Road. Mr. Leach stated this was the original house located on the property on the river. Mr. Leach stated his client has gone to the Conservation Commission to rebuild the house but they changed that proposal. There is no proposed expansion on the house except the garage. An Order of Conditions has been issued from the Conservation Commission. There is an extreme drop down to the river on the property. The existing driveway is from Lawson Street. There is a well located on the property south of the proposed garage. The neighboring properties have less than 25-ft. from the street line. Mr. Leach stated his

client was looking for relief of up to 4-ft. in order to enter the driveway and be able to swing into their garage with re-grading the whole lawn. The proposal is for a one-story garage with a storage loft above. Mr. Leach noted that Riverside Street is a gravel street and Lawson is somewhat paved and in poor condition. Mr. Leach stated that one corner of the garage is 25-ft. away from the property line, while another corner is 20-ft. away from the property line and the well is south of the garage and about 10-ft. from it. Mr. Leach stated the garage can't be sited anywhere else.

Mr. Harrison stated a letter was received in favor of this proposal, the letter was signed by John & Diane Colletti, 1380-C Drift Road (Riverside) and Frank & Shirley Quinn, 1380-H Drift Road (Lawson Street). Mr. Harrison also read a letter received from Mr. Souza, Zoning Enforcement Officer.

Mr. Souza stated he has an onsite plan, and the original plan was dated 02-13-09 from SITEC Engineering. The plan showed 25-ft. from the property line, so a building permit was issued. A second proposal was brought into the Building Department showing 22 ft. from the property line. The regulations call for 25-ft. Now, Ms. Schiffman is asking for 21-ft. but the average is 30.0333 ft.

Mr. Sullivan, abutter, stated his property is located at 1380-M Drift Road. Mr. Sullivan stated he was suggesting this proposal is an inaccurate plan. Mr. Sullivan's concern was that only two abutters signed a letter to the Board. Mr. Sullivan stated that there are possibly two or three garages built in this area not conforming. Mr. Sullivan stated that the property was held in common ownership for over 40 years and now there are two residences on two separate lots. Mr. Sullivan stated his contention is one title, then the property was subdivided after going to the Conservation Commission. The question is the setback decision. Another plan to the DEP depicts Lawson Street in another area. Over the past year, there have been many proposals on this property and the Board needs to look very carefully at this proposal. Mr. Sullivan stated he received a letter from Mrs. Schiffman inviting communication.

Mr. Leach explained that the house was built in 1801 and lots 79 & 80 are separated by a stone wall and have been separate residences since the 1700's; in 1902 the land was subdivided and in 1960 the Guptel's bought the property. The Schiffman's have gone before the Historical Commission and found that the home was of no significant historical value. The Guptel's did buy both lots and sold both lots to the Schiffman's, though under different names. The lots have never been merged because each lot had a house on it. The lot is very constrained and basically there is not enough room to fit a car between the house and the garage. The garage will have a high pitch roof, which will be used for storage. Mr. Souza stated this garage is considered 1-½ stories. Mr. Leach stated his clients want to be able to install electrical service from the house to the garage. Mr. Sullivan stated there has been multiple decisions regarding this property by various boards in Town and his concern is a garage with electricity compared to the garages located down there in that area. Mr. Sullivan again noted that he felt the lots were separated and the conditions that exist should be taken as part of the application. The driveway should be the driveway that was existing. Mr. Souza stated the plan shows the loft over the garage as a studio with a sink and lav.

Mr. Mundel, abutter stated he believed that some other information given to the Boards was different than what was presented here tonight; but one of his concerns would be what will happen to the existing pine trees. Mr. Leach stated his clients would attempt to try to keep all the trees; they have no intention of cutting down any trees. Ms. Guptel was quite a landscaper and Ms. Schiffman plans on maintaining the landscaping because it offers privacy.

Mr. Mundel asked why not having a garage should be considered a hardship. People don't always have garages and if they truly need a garage, why not a smaller garage. Mr.

Mundel stated he did not see the hardship and he was suspicious of studio lofts. Mr. Leach stated this was a typical size garage. Mr. Souza agreed that a typical size garage is 24-ft. x 24-ft.

Mr. Wyatt stated that a garage with a studio should not be called a garage because that is misleading. Mr. Leach stated that Mr. Schiffman, who is a doctor, is also a painter. Mr. Mundel stated that the Schiffman's have done a good job with the property so far.

Mr. Sullivan stated they were sited for a small garage; there is a small shed on the property now; he is not opposed to a small garage to store a vehicle.

Mr. Leach stated the hardship was based on the topography of the land, causing no removal of the trees or cutting into the property. Mr. Coutinho stated the plan is not specific with dimensions. Mr. Souza stated the original plan submitted called for a 24-ft. x 24-ft. garage with one corner meeting the 25-ft. setback. Mr. Leach stated the other lot line is about 22-ft.

Mr. Coutinho asked Mr. Sullivan if he was satisfied with the explanation of the lots. Mr. Sullivan stated that it maybe a post issue for merging. Mr. Coutinho stated to Mr. Sullivan that he was not getting any clear objection. Mr. Sullivan stated he just wanted to voice his concern because he was never notified before this meeting by any other board involved in this project. Mr. Sullivan also noted that he objected to the loft above the garage, especially within 200-ft. from the river. Mr. Harrison stated the loft was actually a finished loft with a lav. Mr. Coutinho stated to Mr. Sullivan that without asking for the 3 or 4-ft. variance, the owner could have built without having to come before the Board. Mr. Sullivan stated the definition of a garage is not spelled out in the bylaws. Mr. Harrison called for any more input from the applicant or the abutters. No input was received.

Motion made by Mr. Wyatt to close the hearing at 9:27 PM. Second by Ms. Lambert.
The Board voted unanimously in favor.

Discussion:

1. The plan needs to be revised by SITEC Engineering showing the 24-ft. x 24-ft. garage measurements.
2. The plan that was submitted to the Building Department, also must be submitted to the Zoning Board file. *Note: Building Inspector provided plan at the meeting.

Mr. Coutinho stated he felt that safety concerns were immaterial in this situation. There is a well onsite and there is a steep grade onsite. By reducing the setback by 4-ft. it will not be detrimental to the neighborhood. The size, shape of the lot, location of the well and topography represent a hardship. Two corners of the lot meet the 25-ft. setback and it is not reasonable to reduce the size of the garage.

Mr. Harrison and Ms. Lambert were in agreement with Mr. Coutinho.

Vote Taken

Motion made by Ms. Fernandes to grant the requested variance for a front setback of not less than 21-ft on both Riverside and Lawson Streets, instead of the required 25-ft., as proposed on the submitted plan dated 09/03/09 for a proposed 24-ft. x 24-ft. garage/loft at 1380 Drift Road. This decision is subject to 09/03/09 dated plan, as revised by Sean Leach of SITEC Engineering on 09/04/09 to indicate the garage size; the plan of 06/16/09 on file with the Building Department showing the garage/loft plan; and that the current trees and landscaping along Riverside and Lawson Streets are to remain and be maintained. The hardship shown was due to the size, shape and topography of the property and the location of the well. The submitted plan was revised by Sean Leach of SITEC Engineering at the hearing on November 4, 2009 to indicate the garage size. The

submittal of the plan that was filed with the Building Inspector was required for the file also. Second by Mr. Coutinho. The Board voted unanimously in favor.

Mr. Harrison advised the applicants that there is a twenty-day appeal period once the decision of the Zoning Board of Appeals is filed with the Town Clerk. On the twenty-first day, the applicant must have a copy of this decision certified by the Town Clerk and it must be recorded at the Registry of Deeds (S.D.).


Correspondence

1. No action was taken regarding a letter received from the Building Inspector regarding 1227 Horseneck Road. This letter was for informational purposes only.

Motion made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting at 9:50 PM Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED: 

Donna Lambert, Clerk