

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 10, 2024**

RECEIVED

MAY 1 2024

**WESTPORT ZONING
BOARD OF APPEALS**

Members Present: Roger Menard, Chair
Gerald Coutinho, Vice-Chair
Constance Gee
Barbara Pontolilo
Raymond Elias
Cynthia Kozakiewicz
George Stelljes

Chair Menard called the meeting of the Zoning Board of Appeals meeting to order at 6:30 p.m. with the reciting of the Pledge of Allegiance.

Chair's Announcement - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded. Chair Menard announced that due to medical reasons, he recuses himself from voting on the petitions unless the Board objected. The Board did not object.

1. The first matter on the agenda is the application of Ronald C. Richard for a Special Permit to convert an existing single-family home into a detached one-bedroom accessory apartment as allowed by Recodified Zoning Bylaw Section 9.5.4. The subject property is located at 129 Sanford Road, Westport, MA and is shown on Assessor's Map 14, Lot 5.

Chair Menard said that the Applicant would address the Board; the Board would hear from any audience members for comment; and the Board would deliberate to render a decision.

The members voting on this matter would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and Chair Roger Menard.

Ronald C. Richard, the Petitioner, addressed the Board. He stated that:

1. He had previously applied to the Zoning Board to convert the existing single-family dwelling into a detached accessory apartment, but withdrew that application because he was waiting to see if Town Meeting would approve the maximum square footage of 900 square feet, instead of 750 square feet.

2. The existing structure will be converted into a detached accessory apartment containing 867 square feet.

3. The apartment will be occupied by his elderly Aunt.
4. He is currently in the process of constructing a single-family home at the end of the property, where he will reside.
5. The Board of Health has approved a septic system to accommodate both the new home and the accessory apartment.
6. The first floor will be livable area including a bedroom, kitchen, living room, and bathroom.
7. The second floor staircase will be removed and replaced with a pulldown ladder. The second floor will be utilized solely as storage.
8. The radiator on the second floor and all other water pipes will be capped with no heat and he will shut off the water supply currently in the basement that runs to the second floor.
9. He will live in the newly-constructed home.
10. He agreed to comply with all the requirements of the Zoning Bylaw 9.5.4, including the signing of a Deed Restriction.
11. There will be a two-car parking area near the front door.
12. The entire property contains 2-1/2 acres.

Vice-Chair Coutinho stated that, at the prior hearing, the main concern was the staircase to the second floor, which would allow the second floor to contain livable space. This provision could be placed as a condition of the Special Permit.

Chair Menard read into the record the e-mail that the Board had received from Matt Armendo of the Health Department, stating that the septic system for four (4) bedrooms had been approved, which includes accommodating the bedroom in the detached apartment.

Chair Menard read each of the Detached Accessory Apartment Bylaw requirements. Mr. Richard answered how he would be compliant with each of the Bylaw requirements.

Ms. Gee stated that the plan is straightforward.

Vice-Chair Coutinho said that the Board had conducted an on-site visit at the property when the prior application had been filed,

which allowed the Petitioner to receive comments on how to accomplish the closing off of the second floor.

There were no public comments made.

Hearing no further discussion by the Board or comment by the public, a motion was made by Mr. Elias to close the hearing at 6:46 p.m. Seconded by Ms. Pontolilo. The Board voted unanimously in favor.

Chair Menard said that the plan is straightforward and the application meets all the criteria under the Bylaw, in particular, with the closing of heat to the second floor and installation of a pulldown ladder for access to storage.

Ms. Pontolilo agreed.

Accordingly, Mr. Elias made a motion to grant the Special Permit to convert the existing single-family structure into a detached one-bedroom accessory apartment as allowed by Zoning Bylaw Article 9, Section 9.5.4. The subject property is located at 129 Sanford Road, Westport, MA and is shown on Assessor's Map 14, Lot 5 with the following conditions:

1. The apartment shall be constructed in accordance with the undated plan that was submitted and presented with the application to the Board.

2. The second floor of the structure will not be livable space, contain no heat and used solely for storage with access by a pulldown ladder with hatch.

3. The Petitioner shall sign a Deed Restriction that will be attached to this decision and recorded with the Registry of Deeds. The deed restriction shall stipulate that there shall be only one bedroom and the apartment shall be for no more than 2 people.

Vice-Chair Coutinho seconded the motion, which passed unanimously to grant the Special Permit.

Chair Menard indicated that there is a 20-day appeal period.

2. The second matter on the agenda is the application of The Bayside Restaurant, Inc., Applicant, and Nance M. Carroll, Trustee, Owner, for a finding that expanding the outdoor seating area to include a non-deck shelled area approximately 1,800 square feet in front of the existing wooden deck where seating has existed

for a long time shall not be substantially more detrimental than the existing non-conforming use to the neighborhood as mandated by Zoning Bylaw Article 5, Section 5.2.3. The subject property is located at 1253 Horseneck Road, Westport, MA and is shown on Assessor's Map 76, Lot 40.

Chair Menard said that the Applicant would address the Board; the Board would hear from any audience members for comment; and the Board would deliberate to render a decision.

The members voting on this matter would be Gerald Coutinho, Constance Gee, Barbara Pontolilo, Ray Elias and Chair Roger Menard.

Chair Menard read into the record a letter that the Building Commissioner/Zoning Enforcement Officer had sent to the Applicants that reads in pertinent part:

"The expansion of the outdoor seating area to include an area off its deck would require a finding by the Zoning Board of Appeals. As per the Westport Zoning By-Laws Article 5.2.3, 'Pre-existing non-conforming structures or uses may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.'"

Chair Menard said that the words, "shall not be substantially more detrimental" refers to safety issues, traffic and not aesthetic or architectural matters.

Attorney Heather Bonnet-Hébert, 25 Elm Street, New Bedford, MA addressed the Board. She stated that:

1. She and Attorney Robert Feingold represent the Petitioners and Catherine Spivey.

2. The Applicants are seeking a finding to continue with the seating plan as has been in existence since COVID.

3. The number of seats would be 82, including inside and outside seating.

4. The seating plan has been in existing for three (3) years with no safety concerns.

5. Safety measures, such as bollards and planters, will be placed to separate the seating area from the street.

Vice-Chair Coutinho raised a few safety issues, including the distance from the street. He noted that the safety plan submitted with the application does not denote any dimensions of areas or distance from the street.

Chair Menard also said that the plan should indicate where the parking areas will be with a layout of the tables. He also stated that the COVID regulation has expired and a finding is required for the restaurant to continue with the same serving areas.

Chair Menard read into the record a letter that the Board had received from Norman and Irene Buck dated March 10, 2016, expressing a concern for the parking issue.

Ms. Kozakiewicz asked for more information regarding indoor seating and how the restaurant would limit the total patrons to 82.

Ms. Spivey said that the wait staff typically moves tables and chairs indoors and outdoors, but the number of patrons does not change. She also stated that only people waiting to be seated are allowed to purchase alcoholic beverages. Ms. Spivey also noted that the Fire Department considers the maximum capacity to be 120 persons.

Attorney Bonnet-Hébert said that the liquor license states 82 seats. She noted that the bar is a serving bar with no seating. Moreover, the restaurant does not control or regulate the parking on the Bucks' field.

Vice-Chair Coutinho said that the Petitioners are asking for something that is not typically allowed.

Attorney Bonnet-Hébert suggested that the hearing be continued so that the Petitioners could provide a more informative and detailed plan showing all dimensions and setbacks as requested by the Board.

Chair Menard suggested that the public make comments so that the Petitioners may be informed of any other concerns by the neighbors.

Norman Buck, 1 Least Tern Circle, Westport, MA said that he lives next door to the restaurant. He said that cars have parked on the part of the field that he owns for the past several years. His concern is with parking as there are, at times, 20 cars parked on the road, which is very busy during the summer season.

Irene Buck, 1 Least Tern Circle, Westport, MA said that her concern is also with the parking issues and, perhaps, there should be a parking attendant supervising where the cars are parked.

Vice-Chair Coutinho inquired about the truck that is parked on the property, and whether it is a registered vehicle and part of the area used by the restaurant.

Ms. Spivey said that the truck is registered.

Susan McWeeney, 42 Third Street, Westport, MA said she was also concerned with the seating capacity, separate staff parking area and parking attendant. She also noted that bicyclists typically travel within four (4) feet between the road and the property.

Ms. Spivey said that the staff parks on the property near the dumpsters.

Vice-Chair Coutinho asked whether the site plan had been filed with the Building Department. Attorney Bonnet-Hébert said she was did not know.

Vice-Chair Coutinho said that the plan should show dimensions of the seating areas and parking spaces/area.

Mr. Elias noted that, typically, one (1) parking space for every three (3) seats.

Janice Dey, 1031 Main Road, Westport, MA said she supports the Petitioners.

Ms. Spivey said she would contact the architect to revise the plans.

Accordingly, the Petitioners requested that the hearing be continued to May 1, 2024 to provide more information to the Board as requested.

Chair Menard made a motion to grant the Petitioners' request to continue the hearing to May 1, 2024. Mr. Elias seconded the motion, which was voted unanimously.

Norman Buck asked about the parking on the street. Vice-Chair Coutinho suggested that Mr. Buck discuss this issue with the Safety Officer at the Westport Police Department. Perhaps, a few signs can be placed there.

Administrative Items:

1. Approval of the minutes of the regular meeting of March 20, 2024. Chair Menard made a motion to approve the minutes of the regular meeting of March 20, 2024. Ms. Gee seconded the motion, which was voted unanimously to approve the minutes of the March 20, 2024 regular meeting.

2. The Board discussed the Planning Board's request for comment regarding a special permit being sought by Charles Merrow at 461 Old Harbor Road. There were concerns expressed with who actually owns the property and the request being made by Mr. Merrow. Ms. Kozakiewicz said that the field card for 461 Old Harbor Road, Assessors Map 87, Lot 5 is 8.1 acres which corresponds to the size of Lot 2. Accordingly, we do not know where Lot 1 came from. The property record card there appears to have been prior subdivisions of this lot. Further, according to Map Geo, the Lot is 10.95 acres. Thus, the ZBA cannot discern what is actually be subdivided as the records are inconsistent and should be updated. Further, both the Assessors card and the Registry of Deeds have the owner being Nootas Hill Land Preservation Trust with EH Levine being the trustee. This is a nominee trust. As the beneficiaries of this trust are private, are we certain that Charles Merrow is the beneficiary and the only beneficiary of this trust. These comments will be submitted to the Planning Board.

3. Chair Menard addressed the proposed Short Term Rental Zoning Bylaws that will be presented at Town Meeting for approval. All Board members were in favor of the proposed Short Term Rental bylaws. After discussion, Chair Menard said that he would report to the Town Administrator that the Board supports the proposed Short-Term Rental Bylaw. The only issue discussed in detail was the minimum stay. The current proposed bylaw requires a minimum stay of 7 days. Members of the Board agreed with this requirement. The Board also would be against any amendment which lowers the minimum to less than 5 days.

Other matters discussed:

1. Vice-Chair Coutinho suggested that Town Counsel review the application that is scheduled for hearing on May 29, 2024 as to whether or not a detached accessory apartment can be later converted into a condominium.

2. Mr. Elias said he researched the cost of legal fees expended by the various Town departments and boards. He said that the

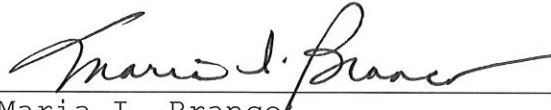
Zoning Board averaged \$100 a month between July 2023 and March 2024.

The next meeting is scheduled for Wednesday, May 1, 2024

Ms. Pontolilo made a motion to adjourn at 8:09 p.m. Ms. Gee seconded the motion, which was voted unanimously.

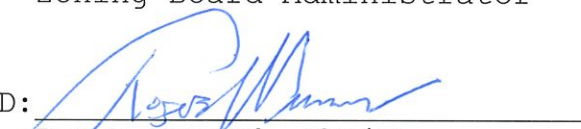
Adjournment.

Respectfully submitted,



Maria I. Branco
Zoning Board Administrator

APPROVED:


Roger Menard, Chair