

ZONING BOARD OF APPEALS
REVISED REGULAR MEETING MINUTES
WEDNESDAY
MAY 17, 2023

RECEIVED

JUL 19 2023

WESTPORT ZONING
BOARD OF APPEALS

Members Present: Roger Menard, Chair
Gerald Coutinho
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. He stated that the meeting is being conducted with a quorum present.

Chair's Announcement - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded.

1. The first matter before the Board was the petition of Michael Castro, Applicant, and Michael Castro, Trustee, Owner for a Special Permit to construct a one-level, one-bedroom detached accessory apartment not greater than 900 square feet with two-car garage, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 46 Orlando Avenue, Westport, MA and is shown on Assessor's Map 68, Lot 25.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Petitioner would present his evidence; the Board would ask questions and discuss the information submitted; the Board would open up the hearing to the public for comment or questions; the Board would close the hearing; and the Board would then deliberate and render a determination.

Chair Menard stated that the members voting on this matter would be Gerald Coutinho, Barbara Pontolilo, Ray Elias, Cynthia Kozakiewicz and, himself, Roger Menard. He said that four (4) out of five (5) members would need to vote in favor of the granting of the Special Permit. Ms. Gee was not present for this hearing.

Chair Menard also noted that the Applicant would be required to comply with the conditions as enumerated in Zoning Bylaw 9.5.3.

Chair Menard stated that the Building Commissioner had recently denied the building permit, stating in pertinent part:

"After review of the submitted building permit application received on March 16, 2023, it has been determined that you are requesting a building permit to construct a 900 square foot, one (1) bedroom detached accessory apartment on your property at 46 Orlando Avenue.

The Town of Westport Zoning By-laws Article 9.5.3 . . . states, 'The Zoning Board of Appeals may issue a Special Permit authorizing the installation and use of a detached accessory apartment in a detached structure on a lot containing a single-family dwelling provided the following conditions are met. . . .'

Therefore, your application is hereby denied. . . ."

Chair Menard also read an e-mail from the Health Department regarding the approved septic system.

Sean Leach, Northeast Engineers, 6 Valley Road, Middletown, RI, and Michael Castro, Petitioner, addressed the Board, stating that:

1. Sean Leach is the engineer working on this project.
2. The detached accessory apartment will be located 250 feet from the end of the cul-de-sac.
3. The property is large, containing more than 26 acres and a three-bedroom single-family home.
4. The structure will contain a detached accessory apartment with 900 square feet and an unheated two-car garage containing 1,236 square feet.
5. The structure meets all setback requirements and is a substantial distance from the road.

6. The septic system approval from the Board of Health was obtained earlier in the week.

7. The structure is not near the wetlands line.

8. The unheated attic space will be used for storage and dormers. Access to the attic will be by a pull-down ladder.

9. There will be a storage closet in the garage.

10. In the winter, the garage will be used to house the Petitioner's mother's van that accommodates a wheelchair for access to the apartment.

11. The structure is 200 feet from the abutters on the west, approximately 230 feet from abutters on the east, 250 feet from the roadway, and 400 feet from the house on the property.

12. The structure is being constructed onto a slab, with no basement. The future of the structure will be a garage.

Chair Menard stated that his main concern is with the space in the attic and in the garage that could, in the future, be converted into one (1) or two (2) bedrooms, which would be a violation of the Zoning Bylaw.

Vice-Chair Coutinho noted that placing the mechanicals in the attic may eliminate the space available for another bedroom; or, in the alternative, the Board could vote to not allow access to the attic.

Mr. Castro stated that he had not decided that issue yet, but they could be placed in the attic.

Chair Menard read into the record the e-mail sent by the Board of Health, indicating that the septic system had been approved at 46 Orlando Avenue. He also noted that the floor plan of 900 square feet is permitted by the Bylaw.

Chair Menard requested that the Petitioner go through each of the provisions required to approve the Special Permit, identifying how he would comply.

Mr. Castro and Mr. Leach answered the requirements under Section 9.5.3 in the affirmative. Mr. Castro noted that he will be building the structure himself to save money with the goal being to have his parents reside in the apartment.

Chair Menard reiterated his concern with the space in the attic and the garage that could be later converted into bedrooms.

Ms. Kozakiewicz also expressed a concern with the extra space in the garage.

Mr. Castro said that the dormers are something that his mother would like; and vaulted ceilings would not be cost-effective, especially with construction and heating costs.

Chair Menard noted that a Deed Restriction is required to ensure that not only the current owner, but future owners of the property will abide by the Special Permit requirements, especially the requirement for a single bedroom, no more than two people living in the apartment, and the owner living in either the main house or the accessory apartment.

Vice-Chair Coutinho said that, typically, the Board conducts a site visit; however, this is new construction.

Chair Menard asked if anyone in the audience would like to make a comment.

Ashley Sparks, 463 Long Highway, Little Compton, RI said that she is an architect and noted that, in the future, applying for a building permit for extra bedrooms may address the Board's concern.

Mr. Leach said that there are precedents that would aid the Board in granting the Special Permit.

Chair Menard said that the Board does not recognize precedents and that he has a major concern with the area in the attic.

Ms. Pontolilo asked Mr. Castro to confirm that the dormers are for aesthetic purposes only. Mr. Castro said that his mother has asked that the structure be constructed with the dormers.

Chair Menard advised Mr. Castro of his options. If the Board denies the Special Permit, Mr. Castro would not be eligible to re-file a new application for two (2) years, unless there was a substantial change in the plans. The other options would be for Mr. Castro to continue the hearing and return with revised plans, or withdraw his petition without prejudice.

Mr. Castro said that his son will be at college and the bedroom in the house is being removed. His concern would be not to put any further stress on the septic system. After discussion, Mr. Castro decided to proceed to a vote.

Motion was made by Vice-Chair Coutinho to close the hearing at 7:03 p.m. Seconded by Mr. Elias. The Board voted unanimously in favor.

Chair Menard said that he has no issue with the project, except for the possibility of constructing a second bedroom.

Ms. Kozakiewicz said that there would be a concern with the septic system if a second bedroom were to be constructed. Otherwise, she had no issue with the project, as the Petitioner will be utilizing the accessory apartment for his parents, which is the purpose of the Bylaw.

Mr. Castro said that, although he agrees that two (2) bedrooms could be constructed in the attic, he could install more wall space in the attic.

Vice-Chair Coutinho stated that he is more concerned with whether the Petitioner complies at this time and not in the future.

There was brief discussion as to whether to install non-working windows in the attic.

There being no further discussion, Mr. Elias made a motion to grant the Special Permit of Michael Castro, Applicant, and Michael Castro, Trustee, Owner for a Special Permit to construct a one-level, one-bedroom detached accessory apartment not greater than 900 square feet with two-car garage, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 46 Orlando Avenue, Westport, MA and is shown on Assessor's Map 68, Lot 25, with the following conditions:

1. The Petitioner shall sign a Deed Restriction to ensure that there will be only one bedroom, a maximum of two people, and the owner shall live in either the main house or the accessory apartment.

2. Construction of the detached accessory apartment shall be in accordance with the undated plans that were submitted with the original petition, as well as the testimony and information presented to the Board at the hearing.

Vice-Chair Coutinho seconded the motion and the Board voted to grant the Special Permit by a vote of 4 to 1 as follows: Gerald Coutinho, Barbara Pontolilo, Ray Elias and Cynthia Kozakiewicz voting in the affirmative; and Roger Menard voting to deny.

Chair Menard indicated that there is a 20-day appeal period from the date that the decision is filed with the Town Clerk.

2. The second matter before the Board was the petition of Peter Johnson and Tanya Johnson for a Special Permit to construct a two-level, one-bedroom detached accessory apartment containing 644 square feet with two-car garage, as allowed by Zoning Bylaw Article 9, Section 9.5.3. The subject property is located at 7 Macomber Lane, Westport, MA and is shown on Assessor's Map 89, Lot 112.

Chair Menard explained the procedure that would be followed at this hearing, namely: the Petitioner would present his evidence; the Board would ask questions and discuss the information submitted; the Board would open up the hearing to the public for

comment or questions; the Board would close the hearing; and the Board would then deliberate and render a determination.

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

Chair Menard said that the application was prompted by a letter issued by Ralph Souza, Chief Enforcement Officer, that states in pertinent part:

"After review of the submitted building permit application received on March 21, 2023, it has been determined that you are requesting a building permit to construct a two (2) stall garage with a second level detached accessory apartment at 7 Macomber Lane.

The Town of Westport Zoning By-Laws, Article 9.5.3, Detached Accessory Apartments, states, 'The Zoning Board of Appeals may issue a Special Permit authorizing the installation and use of a detached accessory apartment in a detached structure on a lot containing a single-family dwelling provided the following conditions are met:'

. . . .

Therefore, your application is hereby denied."

Chair Menard read an e-mail that the Board had received from Matt Armendo of the Board of Health regarding the number of bedrooms in the main house.

Ashley Sparks of AESparks, Inc., 463 Long Highway, Little Compton, RI addressed the Board, stating that:

1. She is the architect for this project.
2. The four-bedroom house is currently being renovated.
3. She believed that the new septic system had been approved by the Board of Health and that Matt Armendo had issued a letter of approval.

Chair Menard read into the record an e-mail from Matt Armendo that stated that the house had five (5) bedrooms and, with the addition

of the accessory apartment, the septic system would need to be upgraded to include denitrification system.

Ms. Sparks stated that the house has four (4) bedrooms, not five (5), and the septic system can support the house and the accessory apartment. She said she was surprised at Mr. Armendo's e-mail and suggested that this hearing be continued to straighten out the matter. Ms. Sparks also said that she had received a permit from the Building Department to renovate the main house to contain four (4) bedrooms.

Vice-Chair Coutinho suggested that the Board proceed with the hearing this evening so that, at the continued hearing, the only issue would be the approval from the Board of Health.

Chair Menard decided that the Board would go forward with the hearing and, therefore, at the continued hearing, the sole issue will be approval of the septic system.

Ms. Sparks said that she would contact the Board of Health to get the issue resolved.

Chair Menard opened up the hearing to the audience, but there was no public comment.

Ms. Sparks stated that:

1. There is a permanent driveway that will come onto the property from Acoaxet Road.
2. The detached accessory apartment will contain a two-car garage on the first level and the apartment will be on the second level, to contain 644 square feet.
3. She affirmed that all of the requirements under Zoning Bylaw 9.5.3 will be complied with.
4. The owners currently reside in California, however, will be moving to Westport permanently and will reside in the main house.
5. The setback measurements are: 28' from Acoaxet Road; 32.6' from the neighbor; and more than 75' to the Macomber Lane side.
6. The owners comply with all the requirements of Zoning Bylaw 9.5.3, including the recording of a Deed Restriction to be made part of the Board's decision.

Vice-Chair Coutinho requested that Ms. Sparks provide a simple drawing showing the setbacks to ensure that the setback requirements are being met.

Ms. Sparks said she would provide that drawing to the Board. She also submitted a motion to continue the hearing to Wednesday, June 21, 2023 at 6:30 p.m. and agreed to an extension of the deadlines.

Chair Menard made a motion to grant the motion to continue the hearing to Wednesday, June 21, 2023 at 6:30 p.m. Vice-Chair Coutinho seconded the motion, which was voted unanimously.

3. The third matter before the Board was the petition of Gilberto Teves for Special Permit to keep more than 3 dogs, but fewer than 7 dogs, for recreational purposes only in a residential area, as allowed by Zoning Bylaw Article 5, Section 5.1. The subject property is located at 2 Almada Street, Westport, MA and is shown on Assessor's Map 24, Lot 18E.

Members voting on this matter were Chair Roger Menard, Gerald Coutinho, Constance Gee, Barbara Pontolilo and Ray Elias.

Chair Menard advised that the Applicant would address the Board, the Board would ask questions and, then, the audience would have an opportunity to ask questions. He also noted that, for the Special Permit to be granted, four (4) of the five (5) members must vote in the affirmative.

Chair Menard read into the record an e-mail that the Board received from Animal Control Nick Vidmar, who said that he visited the property to inspect the dogs and their enclosure.

Gilberto Teves, Petitioner, and his wife, Maria Teves, addressed the Board. They stated that:

1. There are currently seven (7) dogs on the property.
2. At the time that he went to the Town Clerk to license the dogs, he was informed that he needed to obtain a Special Permit from the Board.
3. All the dogs were fully vaccinated and licensed in 2022.

4. All the dogs are contained in a 12' x 14' heated and insulated shelter, with each dog having its own individual crate (6' x 4').

5. The shelter was built two (2) years ago and complies with all setback requirements.

6. The Animal Control Officer Nick Vidmar visited the site and noted to the Town Clerk that the enclosure is more than sufficient for the dogs.

7. The dogs are used primarily for hunting. Mr. Teves travels to Martha's Vineyard and brings the dogs with him.

8. There has been only one (1) complaint that is known to the Petitioner and that was because one of his dogs had scratch markings on its face. Mr. Teves explained to Animal Control Officer Vidmar that, when hunting, the dogs search through brush and other vegetation that may cause them to be scratched up.

9. Mr. Teves would like to keep all seven (7) dogs and requested that the Board not compel him to dispose of one of the dogs.

10. The dogs' barking and hunting are controlled by a collar vibration that, when he pushes a button, the dogs return back to him and do not bark.

Chair Menard said that the special permit allows for a maximum of six (6) dogs. More than six (6) dogs would require a kennel license, which is allowed only in a business district. Chair Menard also mentioned that any complaints made to the Police Department, the last of which was in 2018, were due to the dogs barking. There have been no complaints since 2018.

Chair Menard asked Mr. Teves why there were complaints in 2018, and none since.

Mr. Teves said that with the dogs being in the enclosure and access to the rear of the property, they do not see anyone walking by and are more likely not to bark.

Ms. Gee said she drove by the property and the neighborhood contains many close homes.

Chair Menard indicated that the Zoning By-Laws only allows up to 6 dogs. Any more than that would require a kennel license.

Vice-Chair Coutinho said that, if the Board grants the Special Permit, the Board may revoke its decision if it is found that the Applicant has violated the conditions set by the Board.

There was no comment from the audience.

Hearing no further discussion by the Board or comment by the public a motion was made by Ms. Pontolilo to close the hearing at 7:58 p.m. Seconded by Ms. Gee. The Board voted unanimously in favor.

Chair Menard reiterated that the Zoning By-Laws only allow up to 6 dogs in a residential area. Since Mr. Teves has 7 dogs, the Board may elect to allow Mr. Teves to temporarily keep 7 dogs until one of the dogs is no longer on the premises or dies, at which point Mr. Teves will only be allowed 6 dogs from that point forward.

Ms. Gee also indicated that she would not want Mr. Teves to have to either destroy a dog, or remove one dog from the group.

There being no further discussion, Chair Menard made a motion to grant the Special Permit to keep more than 3 dogs, but fewer than 7 dogs, for recreational purposes only in a residential area, as allowed by Zoning Bylaw Article 5, Section 5.1. The subject property is located at 2 Almada Street, Westport, MA and is shown on Assessor's Map 24, Lot 18E, with the following conditions:

1. The Board allows the Petitioner to temporarily keep seven (7) dogs on the property. However, once one of the dogs is no longer residing at the property or passes away, there will remain a maximum of six (6) dogs and no additional dogs will be acquired; and without the necessity of obtaining a kennel license.

2. The dogs be licensed accordingly with the Town Clerk.

3. The Petitioner allows the Animal Control Officer and the Building Commissioner to conduct inspections of the property.

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

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

Administrative Items:

1. Approval of the minutes of the regular meeting of March 29, 2023. Ms. Pontolilo made a motion to approve the minutes of the regular meeting of March 29, 2023. Vice-Chair Coutinho seconded the motion, which was voted unanimously to approve the minutes of the March 29, 2023 regular meeting.

2. Chair Menard reminded the members whose terms expire at the end of June that they should send a letter to the Select Board of their intent to continue their membership on the Board.

3. Chair Menard said that the reclassification of the Recording Clerk's position and salary were approved at Town Meeting.

4. The Board discussed the Zoning Bylaws that had been approved at Town Meeting.

5. The Board continued its discussion regarding revisions to the Rules and Procedures. Chair Menard said that he would make the changes and e-mail them to the Board for further review.

6. Vice-Chair Coutinho raised the issue of correspondence that had been previously received by the Board that had not been addressed. He suggested that the members review those for further discussion by the Board a future meeting.

7. Mr. Elias stated that he reviewed the invoices from Town Counsel and noted that the Zoning Board had no legal expenditures for the first four (4) months of 2023.

The next meeting is scheduled for Wednesday, June 21, 2023.

There being no further matters before the Board, Ms. Pontolilo made a motion to adjourn the meeting at 8:37 p.m. Chair Menard seconded the motion, which was passed unanimously.

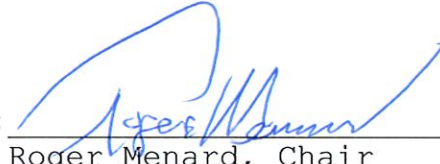
Adjournment.

Respectfully submitted,



Maria I. Branco
Zoning Board Administrator

APPROVED:



Roger Menard, Chair