



TOWN OF WESTPORT
Westport Town Hall
816 Main Road, Westport, MA 02790
Zoning Board of Appeals
Tel: 508-636-1041 or Fax 508-636-1147

February 15, 2024

Kristin Stinson, Town Clerk
Town of Westport
Westport, MA 02790

NOTICE OF DISMISSAL OF ADMINISTRATIVE APPEAL

Dear Ms. Stinson:

The Zoning Board of Appeals hereby submits for filing in your office the following record of the Zoning Board of Appeals proceeding and its decision on the administrative appeal of Robert Branca, Trustee of ANC Nominee Realty Trust, seeking review and reversal of a stop work order issued by the Building Commissioner because the construction is not in compliance with the rules and regulations of the Westport Historical Commission. The subject property is located at 2015 Main Road, Westport, MA and is shown on Assessor's Map 83, Lot 18.

RECORD OF PROCEEDINGS

Pursuant to a Notice of Public Hearing that was duly published in the Westport Shorelines on January 25, 2024 and February 1, 2024, and posted in the Town Hall Bulletin Board and mailed to the owners, Petitioner, abutters, owners of land directly opposite on any public or private street or way, abutters to the abutters within three hundred (300) feet of the property line of the Petitioner, the Westport Planning Board, the Dartmouth Planning Board and the Fall River Planning Department, a public hearing was held on Wednesday, February 7, 2024 at 6:30 p.m. at the Westport Town Hall, 816 Main Road, Westport, MA on the above-mentioned petition.

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

At the outset, Chair Menard noted that Town Counsel had reviewed the documents and opined that the Zoning Board of Appeals lacks authority to make a determination in this matter under § 2.5.3.1 of the Westport Zoning Bylaw because there has been no zoning issue presented in the petition on which the Board could consider. He further stated that he reviewed the documents and believes that the Board has no jurisdiction to rule on or consider a stop work order issued by the Building Commissioner for non-compliance with G.L. c. 40C or the Historical Commission By-law (Article LIX of the Westport By-laws), in that, such a stop work order is not a zoning issue.

Chair Menard said that he would have the Petitioner or his representative address the Board as to the reasons for the administrative appeal and whether or not the Petitioner believes that the Board does have authority to hear this appeal.

Petitioner, Robert Branca, addressed the Board. He stated that:

1. He is the Trustee of ANC Nominee Realty Trust, owner of 2015 Main Road.
2. He filed the administrative appeal as a matter of administrative procedure in an effort to exhaust his administrative remedies.
3. He understood that the forum to appeal a stop work order would be with the Zoning Board.

Chair Menard said that refusals of building permits, for example, do not fall under the purview of the Board to review as there is no zoning bylaw at issue. Chair Menard also noted that the Board has no authority over decisions made by the Historical Commission.

Mr. Branca further stated that:

1. He understood if the Zoning Board determines it has no jurisdiction to consider the appeal of the stop work order, and he said he did not disagree with that determination.
2. A building permit was applied for and issued, and the contractor started the project.
3. He addressed the Westport Historical Commission regarding the grade and wall height and he is uncertain at this time how the Historical Commission will rule on the project.

There being no further discussion, and based on the opinion of Town Counsel, Chair Menard recommended to the voting members of the Board that the matter be dismissed for lack of jurisdiction.

Accordingly, Vice-Chair Coutinho made a motion to dismiss the administrative appeal from the stop work order issued by the Building Commissioner due to the fact that the Zoning Board of Appeals lacks jurisdiction. Further, this decision follows in line with the opinion of Town Counsel that the Board lacks jurisdiction under § 2.5.3.1 of the Westport Zoning Bylaw because the Building Commissioner's stop work order is based on issues concerning historic preservation (G.L. c. 40C) rather than zoning (G.L. c. 40A). Mr. Elias seconded the motion with all five (5) Board members voting unanimously to dismiss the administrative appeal.

FILED WITH THE TOWN CLERK ON:

ZONING BOARD OF APPEALS



By: 
Maria I. Branco
Zoning Board Administrator

Any person aggrieved by a decision of the Board of Appeals may appeal to the Superior Court Department in which the land concerned is situated or to the Land Court Department, or to the division of the District Court Department within whose jurisdiction the land is situated by bringing an action within twenty (20) days after the decision has been filed in the office of the Town Clerk. Notice of the action with copy of the complaint shall be given to such Town Clerk so as to be received within such twenty (20) days in accordance with M.G.L. Chapter 40A, Section 17.