

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JANUARY 20, 2016**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert
Gary Simmons
Larry Kidney
Roger Menard
Heather Salva, Clerk

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance by all present.

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

Kevin and Mary Phelan – RE: An application request seeking a variance of Westport Zoning Bylaw Article 21, Section 21.3 (Common Driveway) to service more than three lots. The parcel is shown on Assessor's Map 86, Lot 26G – Subject Property is located at 0 River Road, Westport, MA.

Voting Petition: Christopher Graham, Gary Simmons, Donna Lambert, Heather Salva, Roger Menard

Also Present: Gerald Coutinho, Larry Kidney (ZBA members)
Ralph Souza, Zoning Enforcement Officer/Building Commissioner
Mary Phelan, petitioner
Sean Leach, SITEC Engineering, representing petitioner

Abutters Present: Robert & Barbara Hawes, 234 Old Harbor Road

Mr. Graham then read the Public Hearing Notice and invited the petitioner to give their presentation. Mr. Leach gave a history of what has happened with the property; the parcel consisted of approximately 18 acres and in April of last year, they received a special permit under the Flexible Frontage Bylaw to reduce the frontage by making two lots which could no longer be further subdivided; one lot became 215 River Road, the existing house (approximately 4 acres) and the remaining lot, which they hoped would be buildable in the future, consisted of approximately 14 acres. Mr. Leach stated at the time, it was anticipated that the existing paved driveway that went to the house would be used as a common driveway; what was not anticipated at the time was that there is a driveway that comes in from a lot that is off locus and connects where the opening curb cut is on River Road, which makes a third lot serviced by the common driveway, which is the maximum allowed for which we are seeking a variance. Over the years, it has been commonly used by the Wyatt property, the Phelan property and the off locus property tied into the common driveway out of convenience. The problem under the Flexible Frontage is because having a 50 ft. wide lot, which goes the distance to the building envelope, is going to use the common driveway; which is in the best interest of the town by not having to put in a large subdivision road due to less disturbance of the watershed area on the top and less curb cuts on the road. Mr. Leach then explained the easement plan created. Mr. Leach stated all lots have frontage on River Road, although they are using the driveway that was created by the Phelan's. Mr. Leach stated that under the bylaw, they can't further subdivide and the only way to make the area buildable, is to put in a subdivision road. Mr. Leach stated in speaking with the Town Planner, who submitted a letter as part of this application, as part of the special permit, even if we were allowed to use a common driveway, this proposal will still have to go back to the Planning Board, if allowed by the Zoning Board, for construction under the bylaw for width, grade, etc. but it will not require a subdivision road; if denied, it will require a subdivision road.

Mr. Leach stated another problem is the placement of the septic, which means we can't move the roadway; another problem is the unique character of the property, there is a very steep hill with about a 10% grade and there are wetlands on either side (installing the common driveway allowed us to go around the wetlands); a subdivision road would be pose a financial hardship. If we cut in a new roadway, it will increase runoff and create two curb cuts to be within 75 ft. of each other. If we do put a subdivision road, it will effect the access of the existing driveway. Mr. Leach stated what his clients are seeking is a variance to Section 21.3 which will allow what is now the existing common driveway to be extended for access to the building envelope, for which they have been allowed to build under the special permit issued that was issued in April.

Mr. Simmons stated the curb cut does not look like it is on the Phelan's property, it looks like it is on Lot B. Mr. Leach stated it is actually on both lots; more on the Phelan property. Mr. Leach stated the interesting thing, is that everyone unofficially used the driveway; they wanted to keep all these steep driveways from coming down to River Road; but there is no official agreement, the Phelan's were being nice, they paved up to their existing house and allowed everyone to tie into it; now, they are stuck between a rock and a hard place. Mr. Simmons asked why construct/pave a driveway that is not on their property. Mr. Leach stated the opening of the mouth splits the property at the curb cut and at the time, 25ft. was agreed to. Mr. Simmons asked if there was something in writing; Mr. Leach stated no and there is no cross over agreement from the two. Mr. Leach stated he spoke with their attorney today, there was supposed to be an agreement but it never happened. Mr. Coutinho asked what was the Phelan's property limits at any point. Mr. Leach stated it was both lots at one time, until they sold it to the Prentice's. Mr. Graham asked if the driveway was in existence before they sold the property. Mr. Leach stated they changed the property due to the steepness. Mr. Coutinho asked if the Detrick property used the driveway. Mr. Leach stated yes. Mr. Coutinho asked which properties were served by the driveway because it looks like the Detrick property, the property where they formerly lived, the other property which looks like they are trying to build on and the Wyatt property. Mr. Leach stated that is correct; Mr. Coutinho stated then there is already four. Mr. Leach stated there is three, we are looking for the fourth. Mr. Coutinho questioned why the engineered plan does not show the driveway going to all. Mr. Leach stated at the time of the Flexible Frontage special permit, we were anticipating slightly changing the access; the mouth of entrance is 20-22 ft. wide and the property line splits; from the road to the split is approximately 50 ft. Discussion ensued regarding the property lines. It was established that the Phelan's never owned the Megna or Briggs properties. Mr. Coutinho stated the driveway was physically serving the Wyatt property when it was purchased by the Phelan's. Mr. Leach stated the driveway was built 20 years before common driveways and Flexible Frontage. Mr. Leach explained what Flexible Frontage allows; for instance, the traditional is 150 ft. frontage with 60,000 sq.ft., if you triple the size of the lot to 180,000 sq.ft., you can cut the frontage by a third to 50 ft.; currently you have to have 30,000 sq.ft of upland, so if you go to 180,000 sq.ft., the upland has to be 90,000 sq.ft. Mr. Leach stated the large lot complies with this. Mr. Coutinho questioned the grade; is there any issue there at all. Mr. Leach stated there has been some slight leveling of an area as you come off of River Road; the driveway meets maximum grade now but as you go up the driveway, it will also have to meet the grade; if the Board allows this tonight, we will still have to go back and make a plan that shows we can meet the grade requirements going up the hill for a common driveway.

Mr. Coutinho stated the common driveway bylaw requires a Homeowners Association be formed at the time this takes places; which lots were under the Homeowners Association at the time. Mr. Leach stated there were none. Mr. Leach stated there was just an informal agreement when it came to plowing and maintenance. Mr. Coutinho stated today's common driveway bylaw requires it, so has it been done yet? Mr. Leach stated no, they only had control of two lots but it would be in everyone's best interest to be part of the association. Mr. Graham asked, why not widen the curb cut another 22 ft. and be done with it. Mr. Leach stated we would still have four houses on the common driveway and it would not help his clients; we would need to add a driveway. Discussion again ensued regarding the engineered plan and layout of the properties. Mr. Coutinho stated if the driveway did not touch the Detrick property, there would be no problem. Mr. Leach stated the Detrick property would still tie into the old driveway. Mr. Graham stated that is why he stated to put in a driveway. Mr. Leach stated there is still the problem of the septic up near the road which services 215 River Road; it is also about 1,000 ft. from the road to the

new house; the common driveway ends at 400 ft. and the Phelan's maintain the main driveway. Mr. Leach stated the Planning Board did not want to widen the curb cut due to stormwater and disturbance; what has led us here is probably because the Detrick lot tied in to the driveway. Mr. Coutinho stated the Briggs are the current owners of the Wyatt property; he was not sure of the legality, but they could be stopped from using the driveway because the Briggs have frontage and could build their own driveway; basically, we are accommodating the Briggs. Mr. Simmons stated that without legal recorded easements, the Phelan's could be in trouble down the road. Mr. Leach stated it would be great to get all the parties involved and put together an agreement because if the Phelan's decide to move and someone else buys it, the new owner could block it and not allow any more use. Mr. Coutinho stated if the Detrick's are not willing to join in on an agreement for easement and the Homeowners Association, there is no reason to be here; there would no longer be a common driveway; right now, there is no Homeowners Association and no recorded legal easements; the bylaw says, if either neighbor don't want to sign on, there is no common driveway with them. Discussion again ensued. Mr. Coutinho stated initially, he thought they already had a special permit for a common driveway and were just looking for a fourth lot. Mr. Leach stated he spoke with the Town Planner, because common driveway is new territory and whereas the driveway was already in existence, he thought it would be best from a Planning Board's standpoint, to have this come before the ZBA to clear this all up. Mr. Simmons stated he personally lives and understands this but the bylaw says "deeded" rights. Mr. Leach stated his client is trying to avoid a legal battle between the four parties over who has rights, we are trying to simplify things and they are trying to fix something that should have been done 20-25 years ago. Mr. Graham stated the bylaw calls for this and this Board is trying to grant a variance with deeded access; we need these items in writing. Mr. Leach stated we are looking for a variance for the fourth lot because this driveway was here before the bylaw. Mr. Simmons stated when the Detrick's bought the property, there should have been a deed then. Mr. Coutinho asked if there was any intention, at all, if this is approved, that when it goes back before the Planning Board for a common driveway special permit, to seek any waivers of the common driveway bylaw. Mr. Leach stated the only waiver would be for the grade; not the width, construction, etc. - no changes to the existing conditions.

Mr. Hawes stated he is in the northwest corner of the property line; he did not have many questions. He stated he did drive up the common driveway tonight before this meeting and he was curious where they would be breaking through. Mr. Leach stated right at the elbow, near the detention area and stone wall. Mr. Hawes stated on his property there is a lot of runoff which creates a massive gully. Mr. Leach stated that is why we can only build in the envelope (the flat part of the hill) so as not to disturb everything; we can't create any runoff under the special permit, that is the purpose of a common driveway. Mr. Coutinho stated an additional driveway will be built, what is the built width. Mr. Leach stated the Fire Department requires 18 ft. Mr. Souza stated the Fire Department requires 20 ft. Mr. Leach stated the whole process is not to disturb anything more than it has to be. Mr. Graham clarified that the Planning Board has already issued a special permit for Flexible Frontage. Mr. Leach stated yes. Mr. Graham questioned why a variance is still required from the ZBA. Mr. Coutinho stated the special permit was for Flexible Frontage, not for what is before us tonight. Mr. Graham stated in order to grant a variance, the Board needs to hear a hardship. Mr. Leach stated the location, topography, the steepness of the hill, the adverse effect of having a 40 ft. right-of-way through their driveway to service one house would be excessive; the hardship being the 10% slope. Mr. Coutinho stated this would avoid another curb cut on River Road. Mr. Coutinho stated what they are looking to do, is inline with the bylaw; this is to everyone's benefit; if approved, all the bylaw requirements must be complied with such as the deeds, Homeowners Association, etc. Mr. Leach stated they basically will need to sign on or give up the common driveway. Mr. Coutinho did note however, that the driveway did exist before the Common Driveway and Flexible Frontage bylaws and this is a clean way to take care of it all; if you drove on River Road, Mr. Coutinho stated he believed you would not see anything different. Mr. Leach stated this will not affect the abutters either (Fors & Carreiro's).

Motion made by Ms. Lambert to close the hearing at 7:54 PM. Second by Ms. Salva. The Board voted unanimously in favor.

Discussion by the Board: Mr. Coutinho stated for the record, that he did not have an opportunity to read the entire packet because he just received it tonight but because it seems to reflect only Flexible Frontage

and that is not the issue the Board is addressing tonight, he was comfortable with not having to read all of the material; but, if he walked in tonight and that material was addressing common driveways, he would want to read it before voting. Mr. Leach stated there is mention in the special permit, if there is expansion of the common driveway, like we are doing here tonight, we have to go back to the Planning Board. Mr. Graham asked the members if there were any restrictions they wanted to place on the decision. Mr. Coutinho stated he would include a condition that the petitioner does not seek or obtain any waivers from the Planning Board in seeking the common driveway, other than, possible grade change to the road; the petitioner must comply with all bylaw requirements, including the Homeowners Association and such. Mr. Coutinho stated the bylaw gives the Planning Board the right to waive some of the requirements and as Mr. Leach has stated he will only be looking to waive the grade change, so by adding in the condition that all requirements are met, it is added protection. Ms. Salva stated she did not have a preference on this; if they decide to chose that after we make our decision, I would rather leave it in their hands. Mr. Coutinho stated he would add the wording because they have the potential to waive additional items. Ms. Salva stated the Fire Dept. sets it; Mr. Coutinho stated the Fire Dept. sets the minimum; Ms. Salva stated that the applicant is not even happy with the minimum. Mr. Coutinho stated he was not talking about the lot, he was talking about making the road wider.

Motion made by Ms. Lambert to grant the request for a variance based on the steep topography of the property, shape of the land, the surrounding wetlands, and given there is no chance of further subdivision; this request is compliant with the intent of the bylaw to reduce damage and water runoff. Second by Mr. Menard. The Board voted unanimously in favor. The hearing is concluded at 8:00 PM.

Approval of Minutes

1. **Motion** made by Mr. Menard to approve the Regular Meeting Minutes of December 16, 2015. Second by Ms. Lambert. The Board voted 5 in favor, 2-abstentions (Coutinho, Salva).
2. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of December 9, 2015. Second by Ms. Salva. The Board voted 6 in favor, 1-abstention (Lambert).
3. **Motion** made by Mr. Simmons to approve the Regular Meeting Minutes of October 14, 2015. Second by Mr. Menard. The Board voted 6 in favor, 1-abstention (Graham).

Action Item

1. **Motion** made by Mr. Graham to approve the 2015 Annual Report of the Board of Appeals. Second by Mr. Coutinho. The Board voted unanimously in favor.
2. No action was taken on the request received from the Planning Board seeking comments and/or recommendations for the Westport Noquochoke Village project.

Correspondence – None.

Other business – None.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting – None.

8:25 PM

Motion made by Ms. Salva to adjourn the Zoning Board of Appeals Meeting. Second by Mr. Simmons. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,

APPROVED: _____
Heather L. Salva, Clerk

Diane Pelland, Principal Clerk to the Zoning Board of Appeals