

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JANUARY 29, 2014**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho
Gary Simmons
Larry Kidney
Donna Lambert
Heather Salva, Clerk
Also present: Ralph Souza, Building Inspector
Absent: Christopher Graham, Vice Chairman

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 with the reciting of the Pledge of Allegiance.

Jeffrey & Sandra Dias Trustees of the 929 Pine Hill Real Estate Trust – RE: Applicant is seeking a Finding that the alteration of its existing, non-conforming use through expanding the physical space of its current convenience store operation within the building and offering additional convenience store items, including beer and wine, shall not be substantially more detrimental than the existing, non-conforming use to the neighborhood. The property is located at 929 Pine Hill Road; also known on Assessor's Map 38, Lot 23.

Hearing petition: Harrison, Coutinho, Lambert, Salva, Simmons
Present: Jeffrey Dias, petitioner
Attorney Richard Stang, representing petitioner
Abutters present: None.

The public hearing was opened at 7:00 P.M. with Chairman Harrison reading aloud the Public Hearing Notice. Chairman Harrison explained the procedure for the hearing; first, the applicant would present their petition and then input would be taken from the abutters. Anyone wishing to speak must identify themselves by name and address.

Attorney Stang stated his client has been in business for the past 24 years. Mr. Dias owns an existing car sales lot and garage repair; along with a small convenience store. On the property there is a gas aisle, pumps, parking area, etc. Mr. Dias is licensed for car sales, car repair, lottery sales and convenience store. The entire business area is approximately 2,900 sq.ft. with the convenience store using 489 sq.ft. Mr. Dias is looking to expand the 489 sq.ft. to 1,335 sq.ft by abandoning one garage repair bay for the expansion of the convenience store. If my client is successful here with the ZBA, he intends on applying for a beer & wine license with the Board of Selectmen. After many years of physical labor, Mr. Dias would like to expand the convenience side of his business and slow down on the repair part. Mr. Dias employs six people currently. Mr. Dias would like to offer his customers more convenience items and he is willing to give up his used car license for more space. Mr. Coutinho asked if the six employees included the owner and were they full or part time. Mr. Dias stated five employees plus himself and five of them were full-time and one was part-time.

Mr. Harrison stated the ZBA is concerned with the zoning aspects of this application; any future licensing will require going to the appropriate board.

Attorney Stang stated he has submitted a complete application for his client and explained that Mr. Dias is altering and expanding the convenience store and decreasing the auto service. It is important to note

that there are only six existing package stores in Westport which are all located within three miles of each other; this will be the only one in this area.

Ms. Lambert questioned the impact on parking. Mr. Dias stated he would surrender his Class II for auto sales back to the Town, which would give him six more parking spaces. Attorney Stang stated there is an additional lot to the other side of the property, where service cars are located and by closing one of the bays, that will also give more space. Mr. Harrison questioned the cars which were parked across the street from Mr. Dias's business. Mr. Dias stated that is where his employees park there; Mr. Tripp owns the property and he does not mind.

Mr. Harrison questioned how this became a convenience store because it never came before the ZBA for a zoning change. Attorney Stang stated his client received his food establishment permit in 2004. Mr. Harrison stated the concern is that you are requesting to expand an existing use that was never approved. Mr. Coutinho stated this is a change of a non-conforming use that is not a legal non-conforming use because it was never approved. The convenience store was not in use in 1994 when the bylaws were in effect.

Mr. Harrison asked the proper name of the business. Attorney Stang stated it was Pine Auto Repair d/b/a Pine Hill Gas & Convenience.

Mr. Coutinho asked that when the changes were done inside, were they done with a building permit?

Mr. Dias stated he remembers coming before the Board or the Town offices for a permit. Mr. Coutinho asked if Mr. Dias went to the Building Department. Mr. Dias stated he remembers seeing the Plumbing Inspector and the Board of Health coming out to his business to inspect. ZEO Ralph Souza stated that in 1999, a permit to revise the office area only was issued and it was made out to Mr. Bernardo, the previous owner.

At this time, the Board reviewed the existing material and the plans given by the applicant. Clarification was given on the submitted parking plan as to the bays and front entrance. Discussion continued regarding the requested expansion size, the existing conditions and the actual expansion size needed.

Mr. Coutinho noted that with all the plans submitted, there are no dimensions shown anywhere. Mr. Dias then explained the layout of the store in regards to coolers, counters, etc. Mr. Coutinho noted that basically, the whole front of the building facing Hix Bridge Road will be convenience store with no self service gas. Mr. Dias stated he will have his employee pumping the gas and he will always have at least two employees running the convenience; the coffee and prep area are closed to the public. Mr. Harrison questioned the storage area accessibility. Mr. Dias stated that is part of the storage area calculations, roughly 12 x 8 ft. it is accessible from the store and not the garage area even though it basically is used for storage of garage items. Mr. Harrison suggested that Mr. Dias have a complete and accurate drawing showing all dimensions, especially for submittal to the permanent file.

Ms. Salva stated she was concerned with the tables and chairs and the possibility of someone drinking alcohol on-site. Mr. Dias stated there is no drinking of alcohol on-site; if there ever was a problem to develop with that he would remove the table and chairs. Mr. Harrison stated that a seating area could be a concern by the BOS when applying for a liquor license. Mr. Coutinho then questioned where customers who were waiting for their cars to be serviced would wait. Mr. Dias stated he has two stations: one for customer service and one for garage service. Mr. Simmons noted that on the plan, a door is shown near the cashier counter which allows for access to the cashier; he noted this because Mr. Dias may want to change that area for safety reasons. Mr. Dias stated that is the area where the cashier is allowed to come out from behind the counter; and it will be the same person who runs the convenience store, that will be running the service area.

Mr. Coutinho asked Mr. Souza what the required number of parking spaces would be with the convenience store in place. Mr. Souza stated it is one space for every two employees, so three spaces would be needed immediately. Mr. Dias stated he has plenty of space in his other lot for his employees. Mr. Coutinho stated on the parking plan, specific designations for parking must be shown for employees, service vehicles and public parking; also, our bylaw says backing-up of cars into a roadway is not allowed. According to the pictures and having driven by the property numerous times, the parking is

helter/skelter; with a convenience store, it has to be specific, especially in designating an entrance and exit.

Mr. Harrison stated he is looking for a flow of how this property came to be. Attorney Stang stated the Assessor's field card states it is an auto repair. Mr. Dias stated that he was upset that the Board of Health did not direct him to come before the ZBA. Mr. Harrison also noted that Mr. Dias did not obtain a "Common Victualler's" License from the Board of Selectmen either.

Mr. Coutinho advised the applicant that he should consider withdrawing and then reapplying for an expansion because right now, you have a non-legal, pre-existing, non-conforming use. Mr. Harrison stated the Board does not have an accurate application before them; he suggested the opportunity to withdraw without prejudice. As of now, we need to have a clear concise parking plan, store layout with dimensions and a history of the property. Mr. Coutinho stated that Mr. Dias may have to move the parking area around to accommodate the expansion; it would be a good idea to have an engineered parking plan because it may show a different story. ZEO Ralph Souza stated that new plans need to be submitted for site plan approval and he needs a code synopsis also for the building. Mr. Harrison stated the petition is good but we need to deal with the bylaws. Legally on the property now, is a car sales lot and a car repair business, you will need to submit a revised application describing the convenience store and for a beer & wine finding, a detailed updated parking plan showing all dimensions; you need to file as though there never was a convenience store there, in order for the Board to consider the application to make this a legal use. Attorney Stang questioned whether to file under 4.1.3 and 4.1.2; Mr. Coutinho stated yes, specify this in your application (alteration) and yes, specify this will be a change of a non-conforming use. The Board agreed an on-site would not be necessary.

At this time, Attorney Stang conferred with his client and submitted a letter requesting a withdrawal without prejudice; stating his client is willing to go back and put together a proper application.

Motion made by Ms. Lambert to allow the petitioner to withdraw without prejudice. Second by Mr. Coutinho. The Board voted unanimously in favor.

The hearing is closed 8:15 PM.

Minutes – None.

Other Business

1. No action taken.
2. Update only – no action taken.

Correspondence – None.


Motion made by Ms. Salve to adjourn the Zoning Board of Appeals meeting at 8:35 PM. Second by Ms. Lambert. The Board voted 6 in favor, 1-absent (Graham).

Adjournment.

Respectfully submitted,



Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED: 
Heather Salva, Clerk of the Board