

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
FEBRUARY 03, 2016**

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

Chairman Graham called the 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(f) – Meeting is being recorded

Westport River Watershed Alliance – RE: An application request seeking a Finding under Westport Zoning Bylaw Section 4.1.3 (Alteration) that by permitting the proposed addition to the structure “such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood”. Petitioner seeks to build an addition on the existing structure to house stairs to the second floor of the building, the restrooms and mechanical equipment. The parcel is shown on Assessor's Map 39, Lot 1A. Subject Property is located at 493 Old County Road, Westport, MA.

Hearing Petition: Christopher Graham, Gerald Coutinho, Heather Salva, Larry Kidney & Roger Menard
Also Present: Ralph Souza, Building Commissioner & Zoning Enforcement Officer
Charles Appleton, Head of the Facilities for the WRWA
Debra Weaver, WRWA
Attorney Dorothy Tongue, representing petitioner
Abutters Present: William Harkins, 660 Gifford Road
Marilyn Packard-Luther, 149 Horseneck Road
Sasha Sullivan, 494 Old County Road
Carl Tripp, 24 Perserverance Lane – Landing Commission Chairman
Antone C. Vieira, 8 Kelly Avenue

The public hearing was opened at 7:02 PM with Chairman Graham reading aloud the Public Hearing Notice. Mr. Graham asked that anyone speaking on the petition was to state their name and address for the record when recognized by the Chair.

Attorney Tongue stated what her client is asking for is a Finding under the Town's Zoning Bylaw as cited; this is for a small addition/alteration (referred to as a bumpout) of 8ft. wide addition to the east front of the building; this is necessary for the design for ADA compliance and for mechanical systems.

Attorney Tongue presented a plan and pictures of the existing building and the addition which will go no higher than two stories; there will be no increase of the footprint except for the 8ft. bumpout. Attorney Tongue stated the Building Commissioner ruled that the uses are grandfathered, non-conforming use but in order to expand the non-conforming use, the WRWA needed to file for a Finding from the ZBA.

Attorney Tongue stated there has been a history of commercial uses of this building which included a blacksmith, an auto dealership, repair garage, small engine repair and sales and construction company offices.

Attorney Tongue stated the purpose and goal of the WRWA is education and environmental education issues and programs; this location is absolutely perfect for their proposed uses. It will be important for the alliance to make the changes in order for the project to move forward. The WRWA is ready and willing to put a fair amount of money into the building. The building needs considerable work and updating in order to be in compliance with codes. Attorney Tongue stated the WRWA has gone to the Planning Board for site approval. Attorney Tongue stated the plan she presented tonight has the plans that were approved by the Planning Board. Mr. Graham asked if the plan included parking. Attorney Tongue stated yes; parking has been a concern and has been addressed at length with the Planning Board and in conjunction with the Landing Commission.

Mr. Coutinho stated he wanted to clarify, as indicated by Attorney Tongue, that the Building Commissioner/Zoning Enforcement Officer had indicated to you, that the use as it stands without a Finding from this Board, does not involve any change of use. Attorney Tongue stated she submitted a letter to the Building Commissioner stating the intentions of the WRWA and she submitted his letter (September 10, 2015) as part of the application. Mr. Souza stated in his letter that this was a pre-existing, non-conforming structure and use, so being a commercial use, this is a commercial type use. Mr. Coutinho asked Attorney Tongue if she had submitted to the Building Commissioner anything stating of what the use was going to be. Attorney Tongue stated she gave him a letter spelling out all the information in regards to what the new proposed uses would be by the Watershed. Attorney Tongue stated the original letter was dated December but asked that a second letter be re-issued because of having to submit to the ZBA within a certain amount of time. Attorney Tongue stated the original letter and second letter are identical except for the date. Mr. Coutinho stated the letter does not say the use is consistent with pre-existing, it states pre-existing, non-conforming structure and use in a residential, agricultural neighborhood but not necessarily related to the use intended by the WRWA. Discussion ensued regarding the letter from the Building Commissioner. Attorney Tongue stated she met with the Building Commissioner and the architect spelling out what our request was so we could go forward with the plans for the addition and what we needed to do. Attorney Tongue read into record the letter received from Mr. Souza, dated August 10, 2015. Mr. Coutinho asked what the two reasons stated for being exempt. Attorney Tongue stated that this is a use conforming in office use, basically in line with the prior commercial use; secondly, there is a provision under 40A, Section 3 that allows for educational use by either a state or local government non-profit educational organization or corporation, which the WRWA falls under and it really falls under it nicely due to the fact that the Town owns the land, although the WRWA owns the building. Mr. Coutinho stated you are not contending that as a non-profit educational organization but because it is owned by the Town. Attorney Tongue stated she was saying because of both. Mr. Coutinho stated he was bringing that up only because it is quite specific about MA non-profit, educational and that it has to be the primary mission of education by a non-profit.

Mr. Coutinho asked Attorney Tongue if this property was located in an Aquifer protection zone because the ZBA had a petition for a property on Forge Road and it was in an Aquifer protection zone. Attorney Tongue asked the WRWA Director; Ms. Weaver responded not that we are aware of. Mr. Coutinho stated the applicant does not know if it is or isn't located in an Aquifer protection zone. Ms. Weaver stated correct. Mr. Coutinho stated he did not know but he believes this pertains, and if it does, there is a bylaw for Aquifer protection (Article 8.3.3) which basically says "uses set forth are permitted within the Aquifer Protection District by Special Permit only and is subject to the approval of the permit granting authority...with conditions...the Special Permit Granting Authority shall be the Zoning Board of Appeals". Mr. Coutinho continued to read the bylaw article; Item B-replacement, modification of pre-existing, non-conforming uses (which this is) in accordance with Section 4.1 (which is the Special Permit

section), the Special Permit Granting Authority (ZBA) shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater. Mr. Coutinho stated that perhaps, this applies here. Attorney Tongue stated that SITEC was not present and she was not going to comment on that but the overlay map is too small to read; she wanted to point out that the applicant has a goal and the utmost concern of not causing any environmental issues, they want to protect the environment, watershed and Westport River. Mr. Coutinho stated his only concern, is if the bylaw does pertain, we would have to issue a Special Permit and this hearing was only advertised to deal with Article 4.1.3. Ms. Salva stated since we are speaking of the Aquifer Protection, it would be appropriate to read into the minutes, the letter received from the Board of Health.

Mr. Graham read into the record, a letter received from the Board of Health dated August 3, 2015 to the Planning Board in regards to the Head Garage. Attorney Tongue stated the purpose of this hearing is for the use; the septic is not within the ZBA's purview; our engineers are still working on what types of systems will be used; the designs will be submitted to the Board of Health for approval, including the DEP. Attorney Tongue stated this becomes very circular (Board of Health, Conservation Commission all wanting one approval before the other). Attorney Tongue stated we may need a continuance.

Mr. Coutinho stated he has been to many meetings; the biggest concerns are parking and traffic, which is a crucial piece; he did not find any previous use as an office; this is a substantial change being presented and again, you did not intend on addressing it as indicated, that there will be exhibits areas, etc, which is quite different from a garage and construction storage. Mr. Coutinho stated the plans that were submitted with the application showing on the first floor a conference table for 18 seats and on the second floor, another conference table showing 8-10 seats plus a large number of employees; this is not equivalent to a builder's office; this seems to be a stretch. Mr. Coutinho asked Mr. Souza, when he issued his letter to the WRWA, was material submitted to you indicating the full breadth of the exhibits and the staff offices, which you equated that to previous offices. Mr. Souza stated the plans show using the first floor with offices; the first floor is basically off-limits because it is in a flood zone unless they get a variance from BBRS in Boston; and the second floor was going to be offices (not as much) and there was going to be a third floor created to do a little more office space. Mr. Souza stated the process has changed a couple of times since he first got involved with it about two years ago. Mr. Graham asked Mr. Souza if an elevator shaft could be put in a flood zone. Mr. Souza stated if it is designed by an engineer, there is a possibility there can be one; it would have to be sealed. Mr. Graham asked if there were any stairs in the building. Attorney Tongue stated not any you would want to use today; the building is not usable, it has to be upgraded; the engineers have been going over this and only a small addition is needed to make it feasible. Attorney Tongue stated that currently, there are six employees, two part-time interns, educational programs done with the children is off-site and there is an occasional meeting once or twice a month, summer camps are held down at the water; there is no heavy, intense use day after day with 20-30 people. Mr. Menard stated that may be the intention, but eventually over time, facilities are used and there is growth in the utilization of the facility. Attorney Tongue stated there have been ten meetings with the Planning Board to deal with the parking, in conjunction with input from the Landing Commission; this is a controlled site; the WRWA owns the building and the Town owns the land. Mr. Menard questioned the ROW for access to the Westport River. Mr. Souza stated he did not know for sure. Mr. Coutinho stated there is access for Westport/Dartmouth residents; it must be kept open but the parking plan will account for that. Mr. Souza stated according to the FEMA maps, the 12ft. Mark is halfway up the 1st floor, so no occupation can be allowed. Mr. Appleton stated all on the first floor can be moved if there is a flood. Mr. Coutinho stated the ZBA needs to do a finding that what is being proposed is not substantially more detrimental on the existing use; in this case, an addition and uses being proposed are of greater use; this is not a variance. A lengthy discussion ensued regarding the steps that have already been taken and the parking plan, which included input from Carl Tripp, Sasha Sullivan, Debra Weaver and Antone Vieira.

Motion made by Mr. Coutinho to continue this hearing to Wednesday, March 30, 2016 at 7:00 PM. Second by Ms. Salva. The Board voted unanimously in favor.

Hearing is closed at 8:35 PM.

Approval of Minutes

Motion made by Ms. Salva to approve the Regular Meeting Minutes of January 20, 2016. Second by Mr. Coutinho. The Board voted 5 in favor, 2-absent (Simmons, Lambert).

Action Items – None.

Correspondence – None.

Other business – None.

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

8:40 PM

Motion made by Ms. Salva to adjourn. Second by Mr. Kidney. The Board voted 5 in favor, 2-absent (Simmons, Lambert).

Adjournment.

Respectfully submitted,
Diane Pelland
Principal Clerk to the Zoning Board of Appeals

APPROVED: Heather L. Salva, Clerk