

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
FEBRUARY 12, 2014**

**Members Present:** Clayton M. Harrison, Chairman  
Christopher Graham, Vice Chairman  
Gerald Coutinho  
Gary Simmons  
Larry Kidney  
Donna Lambert  
Heather Salva, Clerk

**Also present:** Ralph Souza, Building Inspector

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.

**Jose Calheta, 664 Sanford Road – RE: Applicant is seeking a variance to allow commercial use of the rear portion of subject property for parking accessory to 664 Sanford Road. The property is located at 660 Sanford Road and known as Assessor's Map 30, Lots 34, 35 and 46.**

**Hearing petition:** Harrison, Coutinho, Salva, Kidney, Simmons  
**Present:** Jose Calheta, applicant  
Attorney Daniel Stone, representing applicant  
Vincent Majewski, 660 Sanford Road  
Dion Calheta, 664 Sanford Road  
Paula Silva, William Raveis Realtor, representing applicant  
**Abutters present:** Gary & Sherri Swainamer, 10 "B" Street, Westport, MA

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 Stone stated that Mr. Calheta, is the owner of Capeway Roofing located at 664 Sanford Road which abuts the property at 660 Sanford Road owned by Mr. Majewski. The property at 660 Sanford Road consists of two parcels: one lot has a residence and the other lot (#46) is empty. The empty lot is being proposed for use as parking for Capeway Roofing. Attorney Stone stated that the property located at 660 Sanford Road is adjacent to Capeway Roofing, which is adversely affecting the value of it. If a variance is granted, then the sale of 660 Sanford Road will take place. Attorney Stone stated the variance is being requested because it is not substantially more detrimental and it is only a minor enlargement of a non-conforming use.

Jose Calheta stated he has operated Capeway Roofing since 1989. As for 660 Sanford Road, the house will stay and he intends on making improvements to the property; there will be no noticeable changes on the outside and he may even live in the house.

Dion Calheta stated he is the Vice President of Capeway Roofing; back in 1989, they started with 12 employees, now they have 100 employees during the busy season. The property at 660 Sanford Road would alleviate the stress they have now in parking for their employees. Mr. Calheta stated his business has grown and they do contribute to other businesses in Town by purchasing gas, vehicle repairs, food,

etc.; they would like to continue to be in business in Westport. Mr. Calheta presented the Board with a property expansion proposal, complete with photos. Mr. Calheta stated there would be a 6 ft. high privacy fence installed around the perimeter for security and privacy. There would be no access from "B" Street, only through the rear portion of the Capeway main yard.

Paula Silva, Realtor, stated she is representing the sale of this property and with it being next to a commercial property there has been a detrimental effect in selling it. She has listed this property since October 2013 and it is causing a hardship especially when families look at it for a residence and realize it is next to a business; the perception is that this is a commercial zone and it is deterring families from buying; Sanford Road is a busy street. Ms. Silva presented to the Board a letter explaining the situation.

Mr. Harrison asked for an overview of the property. Attorney Stone stated both properties are agricultural/rural residential. Mr. Harrison stated that Capeway Roofing did come before the ZBA for a change of use, which was granted; there are a number of businesses along Sanford Road and they have all gotten along with their neighbors. Mr. Majewski stated he purchased 660 Sanford Road in 2004 from his grandmother and the property has been in his family since the 1970's. Mr. Harrison stated he wanted it established that the Majewski property has been located near a business for a number of years. Mr. Coutinho asked what is the use of 660 Sanford Road; a single family with an apartment? Mr. Majewski stated it was built in 1970's; he purchased the property to keep his mother in her home; in 1986, his parents put on an addition to the house, although it was not properly done. He is in the process of bringing it up to code in order to make it a legal accessory apartment. He is now waiting for final inspection by the Building Inspector but the Plumbing and Electrical Inspectors have signed off. There is a small shed on the lot and the second lot has a two-car cement block building (used as a garage) but it has never been a business.

Mr. Harrison questioned the sizes of the lots. Attorney Stone stated total is 30,000 sq.ft. (Lots 34 & 35 have 20,000 sq.ft. and Lot 46 has 10,000 sq.ft.) Mr. Harrison stated that the property (Lots 34 & 35) will need to remain intact; it also needs to be understood, that with an accessory apartment, it is required that the house be owner-occupied according to our regulations; and Lot 46 (which is 10,000 sq.ft.) is intended to be an isolated use, fenced off and accessible from 664 Sanford Road property. Ms. Lambert questioned the fact that a parcel would be broken off of 660 Sanford Road for use by Capeway Roofing at 664 Sanford Road; if so, once the lot was varied, it would be the whole lot because the lots became merged under one name and that would mean the whole parcel could be demolished and a parking lot put on the whole lot not just the parcel. Mr. Simmons asked if the lot's use was being asked to be changed from residential to commercial. Mr. Graham stated yes, if they are granted a variance. Mr. Majewski stated the lots were in different names prior. Mr. Coutinho stated that all three lots are now in the same names and at some point they became owned by the same party and that is when they were merged due to size.

Mr. & Mrs. Swainamer, abutters, presented pictures to Board of their property which abuts Capeway Roofing. Mr. Swainamer stated they are the only house on "B" Street and they own 14 acres, which they purchased 4 years ago; as a matter of fact, they own all the property behind Capeway Roofing and they purchased this property because it was landlocked by residential lots. Mr. Swainamer also stated that Capeway Roofing loads trucks at 5:00 AM; there is constant foul language; there is water runoff onto their property; and there is storing of chemicals on the property. Mr. Harrison stated as far as violations such as runoff and chemicals, those types of complaints need to go to the appropriate boards, not the ZBA.

Mr. Coutinho stated he did not hear, in specifics and in detail, what the hardship was because a variance requires a substantial hardship such as financial, size and shape of the lot, topography, etc. Mr. Coutinho stated that even though there are two separate lots, they were merged due to the size and zoning once

they were under the same name. Mr. Simmons asked if Lot 46 would be used for storage or parking. Attorney Stone stated it would be used for both.

At this time, Mr. Harrison read the letter from Building Inspector Ralph Souza to the applicant. Mr. Souza stated he would be doing an inspection on the accessory apartment on Thursday and he knows the Fire Department will be doing their inspection shortly; Mr. Majewski did obtain a permit to do corrective measures.

Ms. Lambert stated this is all one parcel and once a variance is granted, we have no jurisdiction over it and due to the merge, the variance is for the entire parcel; the house could be torn down and a parking lot be put in, unless we put conditions on the variance. Mr. Coutinho asked if 660 & 664 were ever owned by the same individual. Mr. Majewski stated it would have been before the 1950's when his grandmother bought it. Attorney Stone stated that historically, the separate lots can be conditioned.

At this time, Chairman Harrison called for any additional information or anyone who wanted to say something before calling for a motion to close the hearing. None was received.

**Motion** made by Mr. Coutinho to close the hearing at 7:45 PM. Second by Mr. Graham. The Board voted unanimously in favor.

### Discussion

Ms. Salva stated that Capeway has been in business in the Town for 30 years; they have been considerate of their neighbors; because they have grown, they may have to move and that would cause other businesses in Town to lose some business. The neighbors bought their home four years ago knowing that there was a business there. It makes sense to keep them in Town and the proposed owner said he will live in the house on the lot.

Mr. Coutinho stated that he did not believe that the Board was legally allowed to put conditions on a variance; how could we enforce anything; the State law allows a non-conforming use to continue and at least once already they have come before the ZBA; they could come before the ZBA with a non-detrimental use. It was stated that the business has grown and that is why we have a commercial zone. The law does not mean to keep expanding a non-conforming use. The real estate agent's letter says it all. The property value is driven down by the business next door. If we were to allow the variance and the expansion, then the hardship would just continue onto the other abutters and so on. A hardship does consist of size and shape of the lot, the soils, the topography and financial but I don't believe it is financial just because the house is not selling; the apartment could be a reason for not selling for example. If we allow the expansion of a commercial use, it will be more and more down the street; I don't believe that is the intent of the bylaw. Capeway may have outgrown the non-conforming use and they may have to move their business or open a satellite shop.

Mr. Graham stated that he agreed with both; Ms. Salva on keeping businesses in Town and Mr. Coutinho on allowing the expansion and where would it end.

Ms. Lambert stated she felt this would be substantially more detrimental to the neighborhood and to residential parcels in Town. There would be no control.

Mr. Coutinho stated this is not a finding by the Board, it is a request for a variance. This has nothing to do with Capeway Roofing; if we give a variance, the property owner could sell to any commercial entity. A variance goes with the land forever; so this would be zoned for commercial uses. If we pass this, and the sale took place, then Capeway would have to come back to the ZBA for an expansion. I don't believe we can put conditions on a variance.

Mr. Graham questioned whether Mr. Calheta could ask for a variance since he is not the owner of the property. Mr. Coutinho stated this is very complex, but as a potential buyer, he may be allowed to. We do not have a strong enough indication of a hardship; simply taking less money for the sale of a home is not a hardship. Mr. Coutinho again stressed it is very difficult to find a true justification for a variance.

Mr. Harrison stated there is an application before us; the property has value as a residential use; my concern if this is passed, what happens to the enforcement. If there are any violations to the abutters from Capeway, then they need to go to the appropriate departments, not this board. We need to look at the merits of this application before us.

Seeing no further input, Mr. Harrison called for a motion.

**Motion** made by Mr. Coutinho to deny the request for a variance due to:

- A. Sufficient legal hardship was not shown because it is primarily related to a reduced selling price of an existing property with a non-conforming use next door;
- B. Using the applicant's own information that was provided to this Board, such a variance would drive the value of the neighboring properties down; abutters should not be subject to such and in effect, there would be no end to the argument from future applications; and
- C. Primarily, this is not a hardship, shown legally to the degree that is required for a variance, which goes to the land and the owners in the future.

Second by Mr. Simmons. The Board voted 4 in favor, 1-opposed (Salva).

The hearing is closed at 8:05 PM.

**Minutes** – None.

**Other Business**

- 1. Mr. Harrison stated the Finance Committee will be reviewing the ZBA's budget for FY'15; no one needs to attend, Mr. Hugh Morton will handle it.
- 2. Mr. Coutinho asked if legal could be asked as to whether a variance can be granted with conditions.
- 3. Mr. Coutinho mentioned that the Planning Board will be bringing proposed bylaw changes to the Town Meeting this spring and explained some of the changes. A copy of those changes will be given to the ZBA members.

**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