

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
FEBRUARY 24, 2016**

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

Absent: Heather Salva, Clerk

Chairman Graham called the meeting to order at 7:20 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

Mark A. & Rolande C. Sullivan – RE: An application request seeking a variance under Westport Zoning Bylaw Article 7, Section 7.6.1 to allow petitioners to construct a 16' x 10' addition in the front yard that will be within 1ft. of Zion Avenue (a private way). The parcel is shown on Assessor's Map 50A, Lot 24. Subject Property is located at 147-E Cadman's Neck Road, Westport, MA.

Voting on Petition: Christopher Graham, Gerald Coutinho, Gary Simmons, Larry Kidney and Roger Menard

Also Present: Donna Lambert (ZBA member)
Ralph Souza, Zoning Enforcement Officer/Building Commissioner
Rolande Sullivan, petitioner
Attorney Marc R. Deshaies, representing petitioner
Robert Valton, representing petitioner – Building Contractor

Abutters Present: Tom McCabe – rep. John & Susan Allan, 147-D Cadman's Neck Road

Attorney Deshaies stated the property has been in the Sullivan family for 65 years and, over time, the house was renovated and reconstructed after a fire; the Title V is for a 2-bedroom dwelling. The existing building is 1,200 sq.ft. and the lot is 3,000 sq.ft. His clients are requesting a variance to construct a 10 x 16 ft. addition in the front yard that will be within 1ft. of Zion Avenue (a private way) to a prior non-conforming structure. A survey was conducted by Allen Quentin, a registered land surveyor. Attorney Deshaies stated that in the application, the existing conditions did not show the walkway or patio, which encroach on Zion Avenue. Attorney Deshaies stated the proposed location of the addition is the only place it can be on the lot; the addition is for living space only, no bedrooms and no bathrooms; this is to give “elbow room” only. The concrete walkway and wood patio will be razed to allow for the addition. Attorney Deshaies stated Zion Avenue is really an access way for the neighbor. Attorney Deshaies stated his clients are trying to put the addition on the front of the house so it will remove the encroachment on Zion Avenue. The current front setback is 25 ft. and the setback from Zion Avenue is 1 ft.

Attorney Deshaies stated this application shows this is a uniquely shaped property; bounded on three sides by locus and Zion; enforcement of the bylaw would cause financial hardship because it has been in the family for 65 years with Mr. & Mrs. Sullivan owning the property since 1999; there is no other use for this property; it is isolated off of Cadman's Neck Road; this request can be granted without eviscerating the bylaw; there is no detriment to the public good. Attorney Deshaies stated with respect, this meets all three

standards of a variance; therefore, they are requesting to vary the 25 ft. to 1 ft. for the addition of a 10 x16 ft. addition in the front yard.

Attorney Deshaies stated he had plans dated 1905 & 1911; and Mr. Quentin did an on-the-ground survey utilizing documents from the Registry of Deeds but this has not been recorded at the Registry of Deeds. Attorney Deshaies stated his clients were pulling out the two encroaching structures and allowing Zion Avenue to be subject to others to pass and re-pass.

Mr. Menard questioned the other houses (Friar & Wilkinson & Allen) in regards to setbacks. Attorney Deshaies stated this is harmonious with all the houses in the area. Mr. Menard stated that Zion Avenue is more like a driveway; Attorney Deshaies stated it is access for the Allens. Ms. Sullivan stated that Zion Avenue does not go around, it acts as a private driveway. Mr. Menard stated that he could see where the well was on one side of the property but where was the septic located. Ms. Sullivan stated on the southerly side. Building Commissioner Souza stated his only issue with this was the setback. Ms. Lambert stated we could consider this a variance but there is already a home on this property; Mr. Souza stated he has already determined this may meet 2-3 ft. but not 1 ft.

Attorney Deshaies stated he spoke with the Town Planner about the front yard because originally, they were going to file for a finding (Article 4.1.3) and Mr. Hartnett agreed that this was a prior non-conforming structure on an odd-shaped lot but the determination from Mr. Souza referred to the setback. Attorney Deshaies stated he did ask if it could be a special permit or a variance but the letter from the Building Commissioner stated it was to be a variance and that is what caused this application; it was based on the conversation with the Town Planner and Building Commissioner. Mr. Coutinho stated that Article 4.1.3 was not applicable; the structure has been around before zoning; and the district is residential/agricultural and not restricted as stated on the application. Mr. Coutinho questioned the special permit. Discussion ensued regarding MGL Ch. 40A.

Mr. Simmons stated the well is shown on the plan but no one has an idea where the septic is and it is not shown on the plan. Ms. Sullivan stated that possibly it is near the well, but she could not be sure where it was located. Attorney Deshaies stated that when it is an inter-family transfer, there is not Title V required. Ms. Lambert noted that before Title V, only beehives were used. Discussion again ensued regarding the possible location of the septic.

Mr. Coutinho stated he felt that a site visit may be necessary and beneficial to the Board. At this time, Mr. Graham read into the record, a letter received from John and Susan Allen, 147-D Cadman's Neck Road opposing the addition's proximity to Zion Avenue (within 1 ft.) because Zion Avenue is a private way which is used on a daily basis to access 147-D Cadman's Neck (abutter's garage). Mr. Coutinho stated the letter did not give a reason for the objection. Mr. McCabe, Ms. Allen's father, stated they felt it would be too close to the road; if it was a little farther back from Zion, they would not have a problem (at least 5 ft); as for the Friar house, it is much newer and the road was never active but it has been active up to the arborvitaes.

Mr. Simmons questioned what the addition would be used for. Attorney Deshaies stated living room only – to allow for more living space. Mr. Coutinho stated a floor plan would be helpful; noting that 1 ft. is from a surveyed property plan but not from the traveled way. Attorney Deshaies stated the traveled way is a minimum of 10 ft.

Chairman Graham stated he would like to conduct a site visit and he would like to see an engineered plan showing the septic system in order to be comfortable to make a decision. Mr. Coutinho stated it would be helpful to have a floor plan of the house, existing and proposed; not an engineered plan but a hand drawn plan. Mr. Coutinho stated this proposal could be beneficial by removing an encroachment in the street; he

would also like a determination of the Bylaw Article 2.5.0 and have Town Counsel advise of its meaning and whether it is relevant on a case such as this (dimensional use).

Mr. Simmons stated the steps need to be shown on the plans for where the entrance to the house will be located. Mr. Coutinho asked what was the purpose of the 2014 survey plan; was the septic redone. Mr. Valton stated the reason the location of the well and septic were not shown was because there is no intention of building over the septic. Mr. Coutinho stated the applicant should check with the Board of Health for any records of a septic system showing the location because part of our decision could show that the placement of the septic is causing part of the hardship.

Motion made by Ms. Lambert for an onsite visit on Saturday, March 5, 2016 at 9:00 AM at 147-E Cadman's Neck Road. Second by Mr. Kidney. The Board voted 6 in favor, 1-absent (Salva).

Motion made by Ms Lambert to continue the public hearing to Wednesday, March 9, 2016 at 7:30 PM. Second by Mr. Coutinho. The Board voted 6 in favor, 1-absent (Salva).

Approval of Minutes – None.

Action Items – None.

Correspondence – None.

Other business – None.

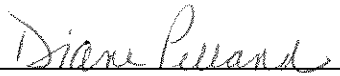
Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting – None.

8:25 PM

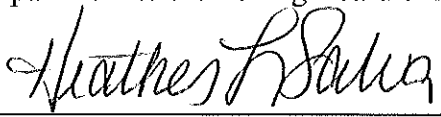
Motion made by Ms. Lambert to adjourn. Second by Mr. Kidney. The Board voted 6 in favor, 1-absent (Salva).

Adjournment.

Respectfully submitted,



Diane Pelland
Principal Clerk to the Zoning Board of Appeals



APPROVED: Heather L. Salva, Clerk