

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MARCH 9, 2016**

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

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(f) – Meeting being recorded.

Robert A. Camara, Jr. – RE: An application request seeking a finding under Westport Zoning Bylaw Article 4, Section 4.1.2 that the addition of a Class II Auto License to sell used vehicles on property will not be substantially more detrimental than the existing non-conforming use to the neighborhood. The parcel is shown on Assessor's Map 81, Lots 12 & 12A. Subject Property is located at 500 Adamsville Road, Westport, MA.

Voting on Petition: Christopher Graham, Gerald Coutinho, Donna Lambert, Heather Salva,
Gary Simmons

Also Present: Larry Kidney and Roger Menard (ZBA Members)
Ralph Souza (Zoning Enforcement Officer/Building Commissioner)
Robert A. Camara, Jr. (petitioner)

Abutters Present: James Whitin, 462 River Road
William Auerbach, 21 Katlyne Court

The public hearing was opened at 7:00 PM with Mr. Graham reading the Public Hearing Notice and asked if anyone wished to speak on this petition, to give their name and address for the record.

Mr. Camara stated he is applying for a Class II License with the Board of Selectmen; presently, he has been approved for a Repair License for 52 vehicles and the Class II License is requesting 12 vehicles. Mr. Camara stated he has an engineered parking plan which was prepared by SITEC Engineering. Mr. Camara stated that previously, there was a plan on this property, approved for 72 vehicles. He has reduced it out of safety reasons such as Public Safety vehicles being able to access the property and for the two upstairs apartment that are on the property. Mr. Camara stated for aesthetic reasons, there would only be a single row of vehicles for sale; the vehicles for repair would be towards the rear of the building. Mr. Camara stated that the vehicles for sale would be nicer up front and the repair vehicles would be towards the rear with less visibility.

Mr. Simmons asked if Mr. Camara owned the property or leased it. Mr. Camara stated he has purchased the property and submitted a copy of the deed to the Clerk. Mr. Simmons asked if there was any other business located on this property. Mr. Camara stated yes, Tim's Lawn Care.

Mr. Coutinho asked what the prior and current non-conforming uses were on the property. Mr. Camara stated currently, auto repair and diesel fuel service station – no gasoline; he also found from a 1994 Finding by the Board, boat trailer repair and equipment fabrication. Mr. Coutinho asked if Mr. Camara was doing any metal fabrication. Mr. Camara stated no, just auto repair and hopefully some auto sales; it is quieter for

the neighborhood. Mr. Camara stated currently, with the auto repair, there is diesel fuel for sale and there is two residential properties (apartments) on the property. The apartments are three-bedrooms, two-baths. Mr. Souza stated this was approved by his predecessors (either Mr. Maltais or Mr. McNally); the Assessor's show this property as mixed-use on their records. Mr. Camara produced the Assessor's field card. Mr. Coutinho noted the record shows a gas station with a singular apartment since 1970; an old building permit on the record shows (1994) office, work area and storage. Mr. Simmons stated the apartments must be in the addition in the rear of the building. Mr. Coutinho stated there is a hand-drawn plan from 2006, approved by the Fire and Building Departments. Mr. Souza explained that back then before he was Building Inspector, applicants were allowed to submit hand-drawn plans; now, engineered parking plans must be submitted before approval by the Building and Fire Departments. Mr. Camara noted that parking spaces #1-6 are for the apartments. Mr. Coutinho questioned "Lots 1 & 2" on the plan from May, 2014. Mr. Camara stated that Lot 2 belonged to Dana Cambra, his mother lives in the house on that property; Lots 12 & 12A were established as the subject properties and he actually owns the driveway parcel also, so there are now three parcels and all three parcels are in the same name (Robert A. Camara, Jr.).

Mr. Whitin, explained the small parcel was done by an ANR; hopefully to be merged with the other parcels but the Planning Board can't make the applicant merge them. Mr. Whitin stated he has a plan, which is highlighted in orange, from 2013 when the last repair license was granted and it was not for the entire 70 spaces; the current plan shows the doorway blocked by parking spaces and some spaces created in the last few months; the other spaces were in use by the landscaping business; twelve spaces were constructed by the prior owner but they never came before the Planning Board.

Mr. Souza stated the spaces were actually excavated and this is a redesigned space; and five or more spaces would trigger site plan approval. Mr. Coutinho stated that additional spaces would trigger SPA but this is Mr. Souza's call. Mr. Souza stated the applicant has reduced the number of spaces due to the egress of the apartments. Mr. Souza stated this was a redesigned space by the prior owners; this is a new owner now and he wants the parking spaces; again, if it were five or more spaces, it would have triggered SPA but the new plan shows less spaces from the 70-space parking plan on record.

Mr. Auerbach, abutter, asked if there would be an increase in hours or any advertising and is there an increase in parking spaces. Mr. Camara stated the plan calls for less vehicles; he is taking 12 cars out of the repair side for use as "for sale" vehicles. He is not increasing his hours and will not be advertising. His main business is repairs, he wants to have used cars for his customers who may have a son or daughter getting their license or their cars are not worth fixing any more.

Mr. Jon Alden, 92 Drift Road asked if there has been any abutters objecting to this; Mr. Graham stated the Board has not heard any tonight. Mr. Auerbach stated he was an abutter and he is resistant to this proposal because he pays \$4,000 in taxes and will have a used car lot in his backyard. Mr. Alden stated he attended a Board of Selectmen meeting on Monday; there was a presentation of the Local Consumer Program and it was stated the difficulties (frauds and scams) that are happening on Route 6 with car dealerships (at least 3/4's of them); wouldn't it be nice to have a repair shop locally in Central Village that Town's people can be comfortable with; someone that everyone trusts. Mr. Alden stated he hoped the Board would move forward with this proposal because he does not see where 12 cars would be a problem, Mr. Camara has always run a good business, it is a great plan, he has made sacrifices and it is a tax revenue for the Town.

Mr. Whitin stated, in speaking for himself and not a member of the Planning Board, he was one of Al's first customers since 1970 (when it was a small business), this was zoned residential in 1973 and over time, it has gotten bigger; this is not zoned for a used car lot; his feeling is a car lot belongs in a commercial zone not a residential zone and he believes this is more detrimental than a repair license.

Mr. Coutinho stated that according to the ZBA decision of the proceeding back in 1994 for a finding, the petitioners (Albert & Diane Cambra) were allowed to construct a 20' x 95' addition to the garage for an

additional work area, office space and storage; there was no mention of any apartments existing at that time; just a three-stall repair shop licensed by the Board of Selectmen (one for fabrication and two for repairs); also, the Board found and determined that the proposed addition to the existing non-conforming structure would provide more space for inside storage of vehicles and equipment, and further, would not be substantially more detrimental to the neighborhood and would not nullify or substantially derogate from the intent and purpose of the Bylaw. Mr. Coutinho stated it seems the intent was to put more vehicles inside; implying fewer outside; but now, all of a sudden, we have 70 parking spaces. Mr. Souza stated that 70 was from his predecessor. Mr. Souza stated that was from 1994. Mr. Coutinho stated is also said no additional employees. Mr. Coutinho stated all he was saying is, that it may be a little much and over burdening the neighborhood (residential area). Mr. Camara stated the total is for 64 vehicles which includes the apartments and 10 vehicles inside. Mr. Souza stated he does not have a plan from 1994. Mr. Coutinho asked Mr. Camara, if he really needed 52 cars sitting there. Mr. Camara stated a vehicle can take a few days just waiting for parts; so while waiting, he works on other vehicles. Mr. Simmons stated he is reducing the number by 12 and will probably never have 50+ vehicles at one time. Mr. Coutinho asked how many employees; Mr. Camara stated we have four. Mr. Camara stated he has a 52 vehicle repair license and is only seeking 12 for sale. Mr. Whitin stated he has a 2013 plan (signed by Mr. Souza and the Fire Dept) which shows 54 outside and 12 inside for 66 total; the current plan calls for 53 outside and 10 inside for 63 vehicles. Mr. Whitin stated it is only three vehicles smaller. Ms. Lambert stated he has reduced it down. Mr. Souza explained that his predecessor's signatures were blocked on the old plan; it is the same plan.

Mr. Coutinho asked if Mr. Camara had any plans to change the business, such as beautifying the property; anything different at all. Mr. Camara stated he wants it to look nice, he wants to replace some of the arborvitaes that are not too healthy but obviously, it is winter and he can't do too much. He does not want to make it look like a shopping mall; he wants to install a lawn area near the road but no plantings too close to road to block the view of anyone exiting the area. He can't do too much with the asphalt area. He would like to place a table and chairs with some trees to make a waiting area outside for when the weather is good. There will be no change to the lighting and all lights do face down from the garage; there is only security lighting at night which is on timers. His hours of operation will be 8am to 6pm (usually there is someone there by 7am with work starting at 8am and work ends at 6pm with him staying in the office until 7pm); he tries not work on weekends because he needs family time, worse case scenario, maybe on a Saturday from 8-12. Mr. Coutinho stated the Board usually puts conditions on this type of thing.

Mr. Kidney asked how many vehicles belonged to Tim's Lawn Care. Mr. Camara stated he has quite a few and he occupies #7-15 and 25-34 and 35-40 but he is moving out on June 1st.

Mr. Alden stated the business has diesel only, so the traffic for gas will be not be there; he feels this is making a mountain out of molehill; Mr. Camara has done a great job and that is not a detriment to the neighborhood. Mr. Coutinho stated the ZBA needs to explore all avenues of this proposal; the Town put zoning in for a reason and we need to try to make this not more detrimental. Mr. Alden stated this garage has been there for a long time; this man is servicing vehicles; the prior owners let the business go to heck; he is cleaning it up and doing a good job.

Mr. Souza stated Lt. Holden and himself are conducting car lot inspections and this business will be inspected yearly like all the other businesses; as for the apartments, they have been there since he was in the Building Department. Mr. Souza stated he has already done an inspection with Fire Lt. Ledoux for the bank for financing.

Mr. Whitin stated the other issue was 4 parking spaces along the road, sometimes they are double stacked. This could be in the Town's right of way and there should be some kind of marking for the boundary. Mr. Camara stated he does not double stack but sometimes customers parking along side of the cars and come in. Mr. Souza stated there will be assistance coming from Taunton for parking along side of road layouts.

7:52 PM

Motion made by Ms. Salva to close the hearing if there were no more questions. Second by Mr. Simmons. The Board voted unanimously in favor.

Discussion

Ms. Salva stated the applicant is cutting back on the number of spaces and the types of uses on the property; she does not see this as substantially more detrimental. Mr. Simmons agreed. Mr. Menard stated there will be no additional signage or lighting. Mr. Coutinho stated the hours of operation were stated by the applicant but we should allow for Saturday 7am-12pm and Monday thru Friday 7am - 6pm with the condition of allowing work to begin at 8am and end at 7pm with no Sunday work.

Vote taken:

Motion made by Mr. Coutinho that in consideration of the application with the information provided to the Board, it is a reduction in the prior number of parking spaces and the Board finds that the plan presented by the applicant would not be substantially more detrimental to the neighborhood and will not denigrate from the intent and purpose of the bylaw. The Board imposes the following conditions: Hours are Monday – Friday 7am to 7pm and Saturday 7am to 12pm (with no work to commence before 8am or beyond 7pm) and no Sunday hours. There will be no additional lighting or signage and all will be in accordance with the presentation and the plan of record from SITEC Engineering dated November 2015. Second by Ms. Lambert. The Board voted unanimously in favor.

The hearing is concluded at 8:04 PM.

Mark A. & Rolande C. Sullivan – RE: Continued Public Hearing on 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 and Heather Salva (ZBA members)
Ralph Souza, Zoning Enforcement Officer/Building Commissioner
Rolande Sullivan, petitioner
Attorney Marc R. Deshaies, representing petitioner
Robert Valton, representing petitioner – Building Contractor

Abutters Present: John & Susan Allan, 147-D Cadman's Neck Road

Chairman Graham called the continued hearing to order at 8:10 PM. Mr. Graham then read the Public Hearing Notice and asked if anyone wished to speak on this petition, to give their name and address for the record.

Mr. Graham stated that an onsite visit of the property was conducted on Saturday, March 5, 2016 at 9:00 AM. Present for the onsite were himself, Larry Kidney, Gary Simmons, Jerry Coutinho and Roger Menard.

Attorney Deshaies stated he has submitted, as requested from the last hearing, a hand-drawn rendering of the plan showing the proposed 10 x16 ft. addition. Attorney Deshaies stated there was a question as to where the stairs would be located so as not to intrude on Zion Avenue; the access will be located on the side of the home. The Board conducted a site visit and although Attorney Deshaies was not present, he believed the Board saw that the proposed addition is consistent with the neighboring properties; also that, this is a unique shaped property (similar to a facet on a diamond), which could constitute a variance and the Board could find this is not more detrimental. Attorney Deshaies stated the hardship is due to the unique shape

(property goes to a dramatic point at two corners), the size of the property is 3,075 sq.ft.; there is very little side yard and no rear; the only location for the addition is the front of the property. Attorney Deshaies stated it is the intent of his clients, who are both retired, to spend more time at the "beach house"; there will be no additional bedrooms or bathrooms; there will be no substantial detriment to the neighborhood and allowing this does not denigrate from the intent and purpose of the bylaw and it will not overwhelm the lot. Attorney Deshaies stated there have been many expansions in the neighborhood on prior non-conforming lots; it is not intrusive to the neighborhood because it is not going up two stories, it is 160 sq.ft. of "elbow" room.

Ms. Salva asked Attorney Deshaies about the mentioning of soils. Attorney Deshaies stated that within the context of a variance, you have criteria that either relate to the shape, soil condition and topography of the land. Attorney Deshaies stated there is no problem with the soils. Ms. Salva asked the Board members what they saw on the site visit; she has only heard from the Attorney what he thought you might have seen. Mr. Simmons stated there is a septic and well on one side of the house, where it comes to a point. Mr. Coutinho stated the size and shape of the lot were unique. Ms. Salva asked if there was a concern with the doors and windows shining light out onto the street. Mr. Coutinho stated no. Mr. Graham stated the only concern was the stairs encroaching onto the laneway and that has been addressed. Ms. Salva asked how big the addition would be. Mr. Graham stated it was 10 x16. Mr. Coutinho stated this is not a large home to begin with; Ms. Sullivan stated it was a summer home only. Mr. Coutinho stated that actually, they will be reducing the current non-conformity because part of their front yard and sidewalk goes into the laneway and this will back it off. Ms. Lambert asked if they were planning on enclosing the deck; Attorney Deshaies stated no; Ms. Sullivan stated it is a ground level deck. Ms. Lambert asked if the petitioner could make the addition a 12 x12. Mr. Coutinho stated if you came out 12ft. it would make it worse. Mr. Coutinho stated that all the neighbors in the area are all close to the road. Mr. Allen, abutter stated his primary dwelling has a setback of about 5-6 ft., it is an undefined setback. Discussion ensued. Attorney Deshaies stated he checked with the Board of Health and there is no plan on file; no BOH as-built plan. Attorney Deshaies stated during the onsite, Mr. Sullivan showed the placement of the septic on the southwestern portion of the lot. Mr. Graham stated that is on the stamped engineered plan.

Mr. Allen stated at the site visit, there was a discussion about a legal opinion from Town Counsel. Mr. Coutinho stated it was irrelevant; it was a misreading of the question; it was when an application that is being dealt with involved a special permit from the Planning Board (it does not deal with this case). Mr. Allen stated the only site plan he received was the 10 x16 addition; no details were included and asked if there was any he could view. Mr. Coutinho stated we only had a verbal presentation and that it would be a single story. Mr. Allen asked if there were any plans showing the height. Mr. Souza stated he did not have any plans yet. Mr. Coutinho stated the expectation is that Zion Avenue may never be developed into a significant street, it is used as a driveway now by the abutters; there are arborvitaes that block one area completely across it; and the next abutter's garage is 2.1 ft. from the borderline. Mr. Coutinho asked if Mr. Volton could give the maximum height of the proposed structure either in feet or relative to the rest of the house. Mr. Volton stated the elevation will start at the roof and go lower at the northern end; the present structure is 10-12 ft. high and the addition will not be higher than that. Mr. Graham stated it was said no higher than the existing structure; Mr. Volton agreed. Mr. Coutinho stated it will be no higher than the existing house and lower than the westerly gutter; he stated he wanted to be very specific about this because it was a concern of the abutter. Mr. Allen stated another issue he was concerned about was the walkway and concrete patio are to be removed and nothing is to be replaced and the egress from the structure is to be to the south, which is already shown on the drawing. Discussion ensued. Mr. Volton stated the petitioners have agreed with him to remove the sidewalk and the deck completely and regress back approximately 8 ft. or more from the paper road. Mr. Allen asked to clarify if the 10 x16 was the outside dimensions. Ms. Sullivan stated that was correct. Mr. Coutinho stated he agreed. Mr. Allen asked if the paper road was public access; Mr. Coutinho stated it was not a public road, it was private. Mr. Allen asked who owned it; does everyone who abuts it own it. Mr. Coutinho stated that was a legal thing because every road is different. Attorney Deshaies explained the derelict fee statute and presented the 1938 plan. Mr. Coutinho stated he believed it could not be impeded for passage. Mr. Allen was concerned about parking. Mr.

Coutinho stated he believed they could park, just not impede. Mr. Allen stated he needed access to his garage. Mr. Simmons stated this is a private way; the rules of the roadway don't apply. Mr. Souza stated the ways rules apply here. Mr. Coutinho state there is existing parking on the south side of the house. Mr. Coutinho stated if the parking becomes contentious, then it is becomes a civil matter.

8:35 PM

Motion made by Ms. Salva to close the hearing. Second by Mr. Simmons. The Board voted unanimously in favor.

Vote taken:

Motion made by Mr. Menard to grant the variance as requested with conditions:

- A. Egress will be the same as shown on the plan (on the south side of the home);
- B. No bedrooms will be added;
- C. Excavation of the concrete patio and deck will not disturb the existing septic system;
- D. Height of the proposed structure will not exceed the existing gutter on the westerly side;
- E. Laneway as it exists prior to excavation will be returned to a passable way again following the construction of the addition (gravel area to be replaced with gravel and grassy area to be replaced with grass);
- F. Exterior measurements of the addition will be 10 x16 ft.

The Board found the following hardships: the shape and size of the lot and the placement of the well and septic system. Second by Mr. Kidney. The Board voted unanimously in favor.

The hearing is concluded at 8:45 PM.

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.

8:45 PM

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

Adjournment.

Respectfully submitted,



Diane Pelland
Principal Clerk to the Zoning Board of Appeals

APPROVED: 

Heather L. Salva, Clerk