

**BOARD OF APPEALS
REGULAR MEETING MINUTES
JUNE 10, 2009**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert, Clerk
Kendal Tripp
Kimberley A. Fernandes, Alternate
William F. Wyatt, Alternate

Absent: Christopher J. Graham

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 02790.

MANUEL ALEXANDRE - Public Hearing on an application for a Variance to seek relief from the Westport Zoning By-laws Article 4.0.1 which prohibits commercial activities in a residential district. The property is located at 111 Main Road, also known as Assessor's Map-67, Lot-23.

Sitting on petition: Harrison-Coutinho-Lambert-Tripp-Fernandes
Attending: Manuel Alexandre, applicant
Ralph Souza, Building Inspector, Zoning Enforcement Officer
Abutters present: Danielle Cabral, 128 Main Road
John B. Kelly, Jr., 97 Main Road

Chairman Harrison called the public hearing to order at 7:00 P.M. Mr. Harrison read the public hearing notice to all present.

Mr. Alexandre stated he bought the property in 1987. The realtor at that time said it was zoned as residential/business area and would be no problem as long as there was not a lot of people working more than 8 hour shifts. In 1988, a complaint was filed because of the stockpile of loam. The loam was removed after the Building Inspector sent a letter. Mr. Alexandre stated there was a Conservation Commission issue back in 1990 and to be able to continue to do business, a soil permit was needed. By 1997, a soil permit was finally issued from the Conservation Commission. Mr. Alexandre stated he has a transfer station on the property. Mr. Alexandre stated the Agent Anne Phelps went to his property and found problems, so the property had to have the wetlands flagged. In 2002, the Conservation Commission stated that any activity had to be 100 ft. from the wetlands. Now, at this time, the Conservation Commission Agent has no issues but the Building Inspector says there are zoning issues.

Mr. Harrison stated for the record, the Zoning Board of Appeals has no jurisdiction over other boards in Town, the Zoning Board of Appeals deals only with zoning issues. Mr. Souza stated that currently a "Cease and Desist" has been issued for the business being operated and there is material on the property that is being processed. Mr. Souza stated his issue is a zoning matter.

Mr. Coutinho stated to Mr. Alexandre that he has not stated the reason he is trying to obtain a soil permit. Mr. Coutinho stated that on the soil permit, it states that the permit must be conforming to zoning. Mr. Coutinho then read a letter that was issued in 1988 from the Building Inspector to Mr. Alexandre regarding a "Cease and Desist" back then. Mr. Coutinho stated to Mr. Alexandre that he was clearly told back in 1988, to stop operating the business, it was illegal. Mr. Coutinho then asked Mr. Alexandre why he was still operating a business, when this letter was issued.

Mr. Alexandre stated he did remove the stockpile and went to the Conservation Commission, who had no issues with him.

Mr. Joseph Faria, 484 Reed Road, stated there were two letters issued by the Building Inspector; one was issued on March 16, 2009 to "Cease and Desist" and a second notice was issued on April 30, 2009.

Mr. Harrison stated to Mr. Alexandre that he was before the Board tonight to plead his case due to the property being located in a residential area and being in violation. Mr. Harrison asked Mr. Alexandre why the Board should consider this application.

Mr. Alexandre stated he has been taxed on his property and his equipment. Mr. Alexandre stated he does stockpile loam and rocks and he screens the loam on the property.

Mr. Harrison asked Mr. Alexandre if there was any other location that fits the business criteria that his business could be relocated to. Mr. Alexandre stated no.

Ms. Cabral, abutter stated that Mr. Alexandre has never been a disturbance or a distraction to her and her property is located across the street. Ms. Cabral stated there is noise, but it does not bother her.

Mr. Kelly, abutter stated he has an issue with the stockpiling of dirt near his property. The water runoff is a nuisance; his backfield is now turning into wetlands. The noise from the rock crusher shakes his house. Mr. Kelly stated he does not have a problem with the stockpiling. Mr. Kelly stated his family has been on the property for 100 years and as far as he knows, the area has always been residential. Mr. Kelly stated he did not want to hurt Mr. Alexandre but ten years down the road, if the property gets sold, it could become a rock quarry. Mr. Kelly stated he has to live near this and is not happy.

Mr. Richard Lambert, Conservation Commission member stated the Commission has had a problem with this property for about six years. During an onsite, the Conservation Agent stated there was to be no storing of materials in the wetlands and that is why no soil permit was issued, due to the wetland issues.

Mr. Alexandre stated the former Agent wanted 100 ft. from the wetlands, so the property was flagged and he had refused to place a stone barrier. Now, the present Agent Mary Trudeau said to remove one small area of stockpiling, after Mr. Alexandre cleared outstanding issues with the Zoning Board. Also, Mr. Alexandre stated he did not understand how water from his land could go uphill into his neighbor's property.

Mr. Coutinho asked Mr. Alexandre if he has sought legal help with his situation.

Mr. Alexandre stated he has thought about doing so but has not done so at this time. Mr. Alexandre stated that lawyers cost money.

Mr. Coutinho stated that everyone is encouraged to get legal help. Zoning in the Town of Westport was established back in the 1970's to protect residents. There are different areas in Town that are zoned for residential use only, some areas are zoned for commercial use and the rest is residential/agricultural. It is very difficult for this Board to

grant a variance without the applicant meeting certain criteria such as soil, topography, financial hardship, etc. The issue is that you are operating a business in an area where it is not allowed. Once a variance is granted, it follows the land forever.

Mr. Harrison stated there was no ability to go back according to the bylaws; the property is the prime subject, which has no grandfathering.

Mr. Coutinho stated there are certain levels of things that can be done in a residential area but there is a difference between a small-scale business, as opposed to a large-scale business. The Board needs to be convinced of how your property meets the state criteria.

Mr. Coutinho stated the applicant has options: The Board could allow a withdrawal with prejudice or the Board could close the hearing, hold a discussion among the Board members and make a decision on the application. Mr. Coutinho then explained to Mr.

Alexandre the withdrawal process.

Mr. Alexandre asked if his backhoe being brought in and out of his property was an issue.

Mr. Souza stated no, but the processing of material is an issue. Mr. Souza stated he did not have a problem with Mr. Alexandre bringing only his truck home; that is what a regular tradesman does; but he could not allow stockpiling and processing of materials.

Mr. Harrison stated that the business has grown and the neighbors have grown with it but the Building Inspector is receiving complaints and has ordered that the soil and rock piles be removed and no processing to take place.

Mr. Alexandre stated the one Board should not issue a permit when it is against another Board. Mr. Alexandre stated he owned five pieces of equipment and asked if that was an issue.

Mr. Souza stated he had no problems with parking the vehicles on the lot. Mr.

Alexandre stated he needed a reasonable amount of time to remove the material; it is more costly to move the material without it being processed; a good amount of time would be six months to a year; also, some of the rocks were for his own personal use.

Mr. Souza stated that six months to a year would only linger this problem on. The complaints will still keep coming; this needs to be taken off the property and processed somewhere else.

Mr. Harrison stated the Board is only dealing with the zoning aspects on the property, the rest needs to be handled by Mr. Souza.

Ms. Lambert stated that Mr. Alexandre has continued to conduct business for the past two years without a permit.

Mr. Coutinho stated that perhaps a continuation of this hearing would help the petitioner to come up with a plan, time to work with the Building Inspector, and to register his business with the Town, etc.

Mr. Harrison again stated to Mr. Alexandre that his business has grown to a point where it needed to be in a commercial area. Mr. Harrison was agreement with Mr. Coutinho, that Mr. Alexandre needed to work out an agreement with the Building Inspector regarding removal time and that a continuation may provide the time needed to gather information. Mr. Coutinho stated he would like to see this hearing continued to allow the petitioner time to get his options in order.

Ms. Fernandes asked Mr. Alexandre if he understood that he was getting time to remedy this situation with the Building Inspector and to remedy his problem of location. Mr. Alexandre stated he understood.

Mr. Souza stated he was looking at three months tops; perhaps in a few days, Mr. Alexandre can find a place to move the material into a commercial area.

Motion made by Mr. Coutinho to continue this hearing to Wednesday, July 1, 2009 at 7:00 P.M. in the Westport Town Hall. Second by Ms. Lambert. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting at 8:40 P.M. Second by Ms. Lambert. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,

Diane Pelland
Diane Pelland, Principal Clerk
To the Zoning Board of Appeals

APPROVED: Donna Lambert
Donna Lambert, Clerk