

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
AUGUST 06, 2014**

Members Present: Christopher Graham, Vice Chairman
Gerald Coutinho
Gary Simmons
Donna Lambert
Larry Kidney
Roger Menard
Also present: Ralph Souza, Building Inspector
Absent: Heather Salva, Clerk

Vice 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.

Re-Organization of the Board

Motion made by Mr. Coutinho to appoint Christopher Graham as Chairman. Second by Ms. Lambert.
The Board voted unanimously in favor.

Motion made by Mr. Simmons to appoint Gerald Coutinho as Vice Chairman. Second by Ms. Lambert.
The Board voted unanimously in favor.

The Board held on appointing a Clerk until their next meeting due to Ms. Salva being absent.

Jeffrey & Sandra Dias, Trustees of the 929 Pine Hill Road Real Estate Trust RE: Applicant is seeking a finding pursuant to Article 4.1.2 of the Bylaws that a change in the prior non-conforming use of the property to also include a convenience store use with the sale of beer and wine shall not be substantially more detrimental than the existing non-conforming use to the neighborhood at 929 Pine Hill Road. The property is shown on Assessor's Map 38, Lot 23.

Hearing petition: Graham, Coutinho, Simmons, Kidney, Menard
Present: Jeffrey Dias, applicant
Attorney Richard Stang, representing Mr. Dias
Abutters: None

The public hearing was called to order at 7:05 P.M. with Chairman Graham reading aloud the Public Hearing Notice. Chairman Graham 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 Stang reviewed the application and the parking plan with the Board members. The current plan calls for 31 parking spaces and the plan was approved in 2006. The existing building layout calls for 2,900 sq.ft. and the existing convenience store calls for 700 sq.ft. (store is 426 sq.ft., waiting area is 54 sq.ft., office area is 108 sq.ft. and the storage area is 70 sq.ft.). Presently, there is a used car license, repair license, gas station and convenience store located on the property. Pine Hill Auto owns the property. In 2004, the convenience store operation began with my client, Jeffrey Dias, believing he was all set to do business due to various conversations with public officials and being issued licenses from the Board of Health. (see attached letter from Attorney Stang for a breakdown of the history). When Mr. Dias came before the ZBA on February 12, 2014 the Board felt this was not a legal use and allowed Mr. Dias to withdraw without prejudice. Attorney Stang stated his client is now before the ZBA seeking a finding. Mr. Coutinho stated that it is very crucial but was not mentioned, that a permit was requested

from the Building Inspector to alter the building, but it was never requested to be a convenience store; the permit was issued but not for a convenience store. Mr. Stang continued with review of the proposed building layout explaining the remodeled convenience store, which will be 700 sq.ft. The owner will only be changing a couple of walls and the waiting area will be a separate area (Mr. Dias is giving up his office to accommodate this space), the store will be 518 sq.ft., the waiting area will be 70 sq.ft. and the storage area will be 70 sq.ft.

Mr. Simmons asked if there will be any consumption of alcohol on the premises. Mr. Stang stated no. After reviewing the proposed site layout and parking reconfiguration, Mr. Stang stated that if his client gets the finding from the ZBA, he will be giving up his Class II License. Mr. Dias stated that the fenced-in area was a tank storage for waste oil.

Mr. Coutinho questioned the adequacy of the number of parking spaces because there were 20 parking spaces shown but in two rows, with one row blocking the other and this would mean that cars would have to back out into the road. Mr. Dias stated that no one would be backing out into the road; most of the cars in that area are repair cars, which are handled by his employees. Building Inspector Ralph Souza stated he was comfortable with the parking plan.

Attorney Stang stated Mr. Dias has been in business for 24 years in Westport and it has taken a toll on his health; with this proposal, Mr. Dias will be able to be in more of the management end of his business. The auto repair industry has changed over the years and it is shrinking, with the convenience store, the revenue hopefully will offset the repairs.

Mr. Coutinho stated that at the last meeting, Mr. Dias presented a petition letter of support but this time, you have not submitted any. Mr. Coutinho noted however that a letter of support was submitted by Tim Gillespie for this petition. Attorney Stang stated we did submit a letter last time, but we did not want to ask the same people for their signatures again.

Mr. Coutinho mentioned the signage at the business, which should be addressed. The current bylaw allows for a 6 sq.ft. sign; presently, you have much larger signs and yet you have not approached the ZBA on this. Mr. Souza stated that if Mr. Dias wants more signs, it should be addressed tonight. Attorney Stang stated the signage relating to vehicles will be taken down but under Article 5.2, it refers to state law and the Town has not adopted anything on signs. Mr. Coutinho referred to Article 4.1.5 – Signs and under 4.0.1.B3 – it addresses allowed uses in an agricultural district; Mr. Coutinho suggested that Mr. Dias make a request for signage in order to protect himself and the Town; and this way, the Building Inspector and any future Building Inspectors will have a record of what is being allowed. Attorney Stang stated that there is approximately 152 sq.ft of signs presently, with the canopy it would be 400 sq.ft. Mr. Dias stated he would be satisfied with 152 sq.ft. Mr. Souza stated this is pre-existing non-conforming, so when Mr. Dias comes to the Building Department for a permit, the sq.ft. allowed should be known. Mr. Coutinho stated the application should be amended to include the amount of sq.ft. of signs you are looking for. Attorney Stang then submitted a handwritten letter requesting amendment to the application to include on the proposed building layout and application, signage which is not to exceed 400 sq.ft. The Board accepted the amendment.

Mr. Menard asked in addition to the permits for retail food and tobacco, what other permits are needed to be a convenience store. Attorney Stang stated his client has also obtained a Common Victualler's License. Attorney Stang then went on to explain why his client needed to come before the ZBA. Mr. Coutinho stated Mr. Dias is before the ZBA because of the expansion of a legal non-conforming use to include a convenience store as requested.

Michael P. Sullivan, Economic Development Coordinator explained the history of the South Westport Village area. Mr. Sullivan stated that the Economic Development Task Force, in looking at the Master Plan, supports this type of business and they also recognized that communication could be improved between Boards.

Chairman Graham asked if there was any input from abutters. No abutters were present. Mr. Graham called for any more input or discussion by the Board members or from the petitioner. Seeing none, Mr. Graham called for a motion to close the hearing and open discussion.

Motion made by Mr. Coutinho to close the hearing at 8:00 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

Discussion by the Board

Mr. Coutinho stated he had no problem at all with this petition; it was actually an improvement of services to the area; there is no other similar services in the area. The applicant is seeking this time, a more modest plan and the Board should support this and Mr. Dias's endeavor. Mr. Coutinho stated that what is being proposed would not be substantially more detrimental to the area.

Vote Taken

Motion made by Mr. Coutinho that the petition be approved to allow the expansion of the auto repair business to include a convenience store as indicated in the plans; to increase signage of up to 400 sq.ft. as indicated by the examples of the photographs of the signs that currently exist but not confining them in the future to the exact signs that currently exist and not to exceed 400 sq.ft.; no issues from the Board's point of view, for a tree buffer or anything of the sort; every effort should be made by the applicant to avoid the backing of vehicles into the public roadway; and there is to be no employee parking across the street because that property is not part of this property and it is not part of the approved parking plan; this proposal is not substantially more detrimental to the neighborhood. Second by Mr. Simmons. The Board voted unanimously in favor.

Mr. Graham stated there will be a 20-day appeal period once the decision is filed with the Town Clerk.

Mr. Coutinho also noted to the applicant that the approval from the Zoning Board does not reflect approval from other departments, nor does it give the applicant carte blanche over any other department such as Building, Conservation, Board of Health in regards to any licensing or permitting; the applicant must deal with all other departments as needed.

Minutes

Motion made by Ms. Lambert to approve the Regular Meeting Minutes of April 16, 2014. Second by Mr. Coutinho. The Board voted five in favor, 1-absent (Salva) and 1-abstention (Menard).

Motion made by Mr. Coutinho to approve the Regular Meeting Minutes of May 13, 2014 with one amendment. Second by Mr. Simmons. The Board voted four in favor, 1-absent (Salva), 2-abstentions (Lambert, Menard). *Amendment – page 1 change Grill to Grillo.

Decisions – None.

Correspondence

1. Request for One-Year Extension of Comprehensive Permit for Brookmeadow Westport, LLC., Brookmeadow Estates

Attorney Freeman and Robert Carrigg were present.

Attorney Freeman explained the history of the Comprehensive Permit for Brookmeadow Estates which included an appeal and the outcome of the court's decision; noting that the case never went to trial, it was an out of court settlement. Attorney Freeman stated the Comprehensive Permit lapses

after 3 years with no action but the final disposition from the court was on October 6, 2011 and that starts the 3 years. Due to a failing economy at the time, no action was taken but now the applicant is ready to move forward and is asking for a one-year extension. There has been no changes to the plan; any modifications in the future will need to come back to the ZBA for a determination as to whether the changes are substantial or insubstantial. Mr. Coutinho asked if the court changed any part of the application. Attorney Freeman stated no, it never went to trial. Attorney Freeman stated the original decision was never recorded possibly due to the long appeal process or an oversight but if the Board approves the one-year extension, it will be recorded without haste.

Motion made by Mr. Coutinho to grant the one-year extension as requested. Second by Mr. Simmons. The Board voted unanimously in favor.

2. Buzzards Bay Comprehensive Conservation and Management Plan (CCMP)

No actions taken. No votes taken.

3. Attorney Levin was present regarding Underwood Farms and file a plan as requested. No discussion or action was taken. No votes were taken.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting

Executive Session – 8:25 PM

Motion made by Mr. Simmons to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to approve Executive Session Minutes of April 16, 2014. Second by Mr. Coutinho. The Board voted 6 in favor, 1-absent (Salva).

Roll Call Vote: Mr. Simmons-aye. Mr. Coutinho-aye. Mr. Kidney-aye. Mr. Menard-aye. Ms. Lambert-aye. Mr. Graham-aye.

Chairman Graham announced the Board would return to Open Session in order to adjourn.

Open Session – 8:35 PM

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting. Second by Mr. Kidney. The Board voted 6 in favor, 1-absent (Salva).

Adjournment.

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

APPROVED: Heather L Salva
Heather Salva, Clerk of the Board