

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
SEPTEMBER 24, 2014**

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

***Note:** Ms. Lambert arrived at 7:15 PM

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 Heather Salva as Clerk. Second by Mr. Simmons. The Board 5 in favor, 1-abstention (Salva) and 1-absent (Lambert).

Jeremias Torres, 5 Goyette Street - RE: Applicant is seeking a variance from Westport Zoning Bylaws, Article 2.4.2.2 to convert an existing barn into a five-unit rental storage facility on property located in a residential/agricultural neighborhood. The property is shown on Assessor's Map 21, Lot 7.

Hearing petition: Graham, Coutinho, Simmons, Salva, Kidney
Also present: Ralph Souza, Zoning Enforcement Officer
Present: Jeremias Torres, applicant
Abutters: Brandon & Christine Bigelow, 2 KC Drive
John P. Carrigg, 176 American Legion Hwy.
Maureen Murphy, 11 Crestview Drive

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.

Mr. Torres stated he was seeking a variance to convert his barn into five storage units for rent. Mr. Graham asked what the existing use was. Mr. Torres stated that right now, he rents a few stalls but he needs the permit to do it because he had a fire there and that is what started all this. Mr. Graham asked on what grounds Mr. Torres was seeking a variance. Mr. Torres stated he wanted to make storage units for rent on the part of the barn he can use. Mr. Coutinho stated the Board needed more background information on the property and it should be submitted in writing. Mr. Coutinho stated the application is for a zoning variance but the information is pretty sketchy; the existing use of the property is listed as a farm on the application; can you explain the application and who is the farmer? Mr. Torres stated he was the farmer. Mr. Coutinho stated so then it is a farm with no rentals. Mr. Coutinho asked for a clarification of the rentals. Mr. Torres stated he is the only farmer but he rents out storage units. Mr. Coutinho stated then the rentals are an illegal use because you currently rent out storage units and are

here trying to obtain a variance to get it legalized. Mr. Graham questioned what kind of farm Mr. Torres was running, was it vegetable or livestock. Mr. Torres stated more livestock, some vegetables. Mr. Coutinho stated that if this was only a farm, Mr. Torres did not need to be before the ZBA because it is located in a residential/agricultural zone and he has a right under agriculture; Mr. Torres don't have a right to rent out units. Mr. Coutinho stated that in order to seek a variance, Mr. Torres needed to show the Board why he was not able to utilize the property for the use that it is zoned for which is residential/agricultural. Mr. Torres can't just put a business any place he wants to, unless there is a reason for it, so the Board needs to hear the reason for the hardship. Mr. Coutinho stated to Mr. Torres that he needed to be very specific about what he wanted to do with the property, the size of the property, the size of the units, any renovations, etc. and also a hardship must be shown as to why it can't be used for what it is zoned for; these are things that need to be addressed by the applicant not this Board and the Board is not aware whether Mr. Torres has sought legal counsel on this matter. Mr. Torres stated that one reason is that he needs to make money to pay the mortgage on the property and by renting a few stalls on the property, it will help him do that. Ms. Salva stated the hardship could not be personal finances, it had to be to with the land. Mr. Simmons questioned the number of campers on the property according to the Building Inspectors' letter of 02-24-14. Mr. Torres stated all but three of the campers belonged to him; the older ones were not registered; one camper belongs to his sister. Mr. Graham stated that in order for the Board to grant a variance, we have to find that there are circumstances related such as soil conditions, the shape and topography of the land, or structures which generally don't affect the district in which they are located; in order to issue a variance, one or all of the conditions have to be met; so, Mr. Graham asked if there was something about the building or the land, that would preclude Mr. Torres from continuing to farm or put a residence there. Mr. Torres stated no, it is just that the property is so big that there were 200 cows in the barn and before that it was used as a chicken farm. Mr. Torres stated he would not be putting cows in that barn. Mr. Torres stated that he bought the property in 2006, but the prior owner sold all the cows before he took it over. Mr. Coutinho questioned Mr. Torres how he intended on paying for the property if he never intended to put cows back. Mr. Torres stated the prior owner rented out to other people such as landscapers, so he figured he would do the same. Mr. Coutinho stated that basically, you inherited the situation the way it was and figured, even though it was illegal you would continue. Mr. Torres stated he thought it was legal and that it would help pay for the property. Mr. Coutinho stated he was told that there were shooting games on the property. Mr. Torres stated his stepson wanted to do something like that but it never happened. Mr. Coutinho stated that type of use would also be illegal because the Zoning Bylaws state that that type of use would require a special permit from this Board.

At this time, Mr. Graham read into record the letters dated February 24, 2014 and July 14, 2014. The letter dated February 24, 2014 issued a Cease & Desist Order and the letter dated July 14, 2014, issued a denial for a building permit.

Mr. Souza stated there was a major fire at the property where two stalls were destroyed; the remaining barn, approximately 100 ft. was divided into stalls and rented. The occupants of the stalls were a landscaper and a small engine repair. There were vehicles destroyed in fire but you could not tell if they were being worked on or just stored there. There were no permits issued or business certificates for the businesses; there was no activity being conducted with animals. Mr. Souza stated the Westport Police and Fire were called to the property and that is why the letters were generated by his office. Mr. Coutinho stated the letter in February was to cease and desist but apparently, it is still ongoing. Mr. Souza stated he gave the applicant an opportunity to legalize what he was doing. Mr. Souza stated he advised Mr. Torres that he needed to file with the ZBA to try to get an approval; if the ZBA approved the application, then a building code synopsis would need to be done, if the ZBA denied the application, then the operation would have to cease and desist. Mr. Souza stated there is no original building permit on file but the Assessor's records do show a barn since the 1940's. Mr. Souza stated the application for building permit was to convert the barn into rental stalls, which were already there; the application was

to legalize the operation. Mr. Souza stated that on a prior site visit, there were animals on the property but the barn was being used as rental stalls. Mr. Coutinho stated that pictures were submitted, but they do not show the typical barn; they show a long building. Mr. Souza stated that it appeared that over the years, with previous owners, there were additions put on the original barn; during a site visit different foundations were observed.

Mr. Graham called for any input from abutters.

Brandon Bigelow stated he abuts Mr. Torres property in the front. The reason he was here tonight is for safety; there has been two fires and illegal activity on the property; security is a concern if there are going to be rental units; we are worried about things like the hours of operation and who the people are that are accessing the property because our property is about 500 ft. away and anyone can just walk right onto our property from Mr. Torres's property. Mr. Bigelow stated he understood Mr. Torres's trying to meet bills and wished him no ill will but there are safety concerns that need to be addressed.

Maureen Murphy stated when there was a fire on New Year's Eve two years ago, it was caused by an explosion and we are pretty close to the property. Ms. Murphy asked how are we going to know what type of businesses Mr. Torres will be renting to, especially when he has been doing this without anyone knowing about it; this is a safety issue. Ms. Murphy stated she was not sure how close they were to the barn. Mr. Bigelow stated they were about 500 ft. away. Mr. Coutinho asked if the barn could be seen from American Legion Highway. Mr. Souza stated no, it was approximately a quarter mile off the main road down a laneway.

John Carrigg stated even though there has been fire, noise and smells coming from the property, he has never initiated anything against Mr. Torres. Mr. Carrigg stated he does not know Mr. Torres and has no bad history with him. Mr. Carrigg gave a history of the property since 2010, which included calls to the Fire, Police and EMS to the site. With the New Year's Eve fire, the Fire Department did not even want to enter the building due to not knowing what was in 55 gallon drums that were stored onsite. Mr. Carrigg stated he is an advocate for personal property rights but there is a safety concern here; there are children in the area and there was a drug dealer being rented to on that property. For the last four years, a lot has been going on on that property and not all legal. Mr. Carrigg presented a picture of the area and the location of the property in respect to the abutters. This is a public safety issue. Mr. Carrigg submitted a signed petition from the neighbors who were in opposition of the application.

Mr. Graham called for any more input from any abutters. No additional input or comments were received.

Mr. Coutinho questioned Mr. Torres as to the size of his property. Mr. Torres responded 22+ acres. Mr. Coutinho asked how the property was accessed. Mr. Torres responded, by a laneway from Route 177 (American Legion Hwy) which is about 1,000 ft. long; he has no frontage on this property. Mr. Coutinho asked who owned the laneway. Mr. Torres stated he was not sure who owned the laneway, maybe he does, he was not sure. Mr. Torres stated that others use the laneway; the laneway does not go through his property, it goes around his property to someone else's property. Mr. Souza stated the laneway is known as Bea's Lane.

Ms. Salva asked the Animal Control Officer Donna Lambert, who has been on the property in the past, whether Mr. Torres has complied with any of her requests in regards to the care of the animals and whether there was security on the property. Ms. Lambert, who is also a member of the ZBA, stated that Mr. Torres has complied with all her requests when she spoke with him in the past.

Mr. Coutinho stated that abutters indicated there was a smell of manure; how is that possible if there are no animals. Mr. Souza stated that there were animals on the property in the past, but at the last site visit, he did not see any, that does not mean they weren't there because the property does consist of 22 acres.

Mr. Torres stated that he rents out stalls for the storage of autos, clothes, household furniture, etc. The last fire was on his vehicles in his part of the barn; the first fire wiped out about 128 ft. of the barn but there was never a determination as to what started the fire, which happened around 11:00 PM. Mr. Torres stated it was a cold day, he had the wood stove going to warm up the barn because one of his rabbits had just had babies. He left the barn around 6:00 PM, everything was fine, then he got a call that the barn was on fire.

Mr. Coutinho asked Mr. Torres if he had any control over the storage units because there was a mention of weapons being stored and hazardous materials. Mr. Torres stated that if he knew there was a gun being stored, it would never have been allowed. Mr. Torres stated he has eight grandsons that he brings to the property, there is no guns allowed; if there were guns, he would not be bringing his grandchildren. Mr. Torres stated he tries to do everything right, he does not throw manure around to bother his neighbors. Mr. Torres stated he did not live on the property, but he does rent out the house on the property. Mr. Torres stated he tries to be a good neighbor, after all, he lives in Westport also. Mr. Coutinho questioned a house on the property being rented. Mr. Souza confirmed there was a small cape-style residence on the property. Mr. Torres stated he rents out four units: his nephew, Ritchie has two cars and a couple of motorcycles, there is Paul, a weekend landscaper who has a dump truck and trailer, there is another one who stores household furniture and there is another one who stores cars.

Mr. Simmons stated that Mr. Torres said he has a hardship of trying to pay the mortgage, does Mr. Torres realize the cost to bring this structure up to code, if this variance is granted. Mr. Torres stated he would be doing the work himself, he can't pay someone to do it. Mr. Simmons stated that with the storage of vehicles, the updating to code would have to be done quickly especially in regards to fire hazards.

7:35 PM

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

Discussion by the Board

Ms. Salva stated she did not see any hardship to the land; Mr. Torres's actions are reckless and all of the evidence tonight shows that; ignorance of the law is not an excuse. Ms. Salva stated she is opposed to granting this. Mr. Coutinho stated he saw no reason for a variance in this application and none has been shown. Mr. Coutinho stated having a barn there is not an issue but he rents a house on this property, so there is a question of whether he can rent storage space in the garage. Ms. Salva stated she would say no because he is not renting to the resident in the house; he is renting to outside people.

Mr. Souza stated that in a rural/agricultural district, in his opinion, you can't have a business and the barn being rented out is a business, it is all for profit. Mr. Coutinho asked Mr. Souza, if Mr. Torres's renter wanted to store fifty-five cars in the barn would it be okay? Mr. Souza stated it would require a Motor Vehicle Storage License which is issued by the Board of Selectmen and then it would revert to being a business.

Vote Taken

Motion made by Mr. Simmons to deny the request for a variance due to the lack of a demonstration for a hardship. Second by Mr. Coutinho. The Board voted unanimously in favor.

*Note: Ms. Lambert leaves the meeting at 7:45 PM

Minutes

Motion made by Mr. Simmons to approve the Regular Meeting Minutes of August 6, 2014. Second by Mr. Coutinho. The Board voted 6 in favor, 1-absent (Lambert).

Decisions – None.

Correspondence

1. A letter was received from CHAPA regarding Brigg's Landing. Informational only – no votes taken.

Other Business

1. Vote to accept the revision of the applications used by the ZBA. This matter will be taken up at the Board's next meeting on October 8, 2014.
2. Mr. Coutinho gave the Board members an update regarding an informal meeting held by various departments regarding the activities taking place at Westport Rivers Winery. Informational only – no votes were taken.

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

Executive Session – 8:10 PM

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

Roll Call vote: Ms. Salva-aye. Mr. Simmons-aye. Mr. Coutinho-aye. Mr. Menard-aye. Mr. Kidney-aye. Mr. Graham-aye.

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

Open Session – 8:15 PM

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

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