

**BOARD OF APPEALS
REGULAR MEETING MINUTES
SEPTEMBER 30, 2009**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert, Clerk
Kendal Tripp
Kimberley A. Fernandes, Alternate
William 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 – RE: Continued 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 and Fernandes
Attending: Ralph Souza, Building Inspector/Zoning Enforcement Officer
Abutters present: Joan Morton, 125 Main Road
Chairman Harrison read a letter received from Attorney Corey dated 09-30-09 requesting a continuance as well as a waiver of any and all applicable time standards due to Attorney Corey being unable to attend the hearing because of a family emergency.
Mr. Harrison stated that an onsite was conducted on Saturday, September 26, 2009 for Board members to view the property. At this time, no testimony would be taken from anyone.

Motion made by Mr. Coutinho to continue the hearing to November 4, 2009 at 7:00 PM. Second by Ms. Lambert. The Board voted unanimously in favor.
Ms. Morton stated to the Board, that she appeared tonight not knowing there would be a continuance but she did want the Board to know there has been no excessive noise that interferes with her life. Mr. Harrison asked that Ms. Morton either come to the next continued hearing date or to submit a letter to the Board if she could not attend.

UNDERWOOD FARMS OF WESTPORT, INC. – RE: Continued Public Hearing on the application of Underwood Farms of Westport, Inc., 1344 Main Road for a variance due to a boundary dispute (condition #15) and crawl space height requirements (condition #3) of a decision rendered on April 4, 2007. The property is located at 1344-1346 Main Road, also known as Assessor's Map-56, Lots 10 through 10-7.

Sitting on petition: Harrison, Coutinho, Lambert, Tripp and Fernandes
Attending: Attorney Mark Levin, representing applicant
William & Nancy McDonald, 1344 Main Road, applicant/owner
Steve Giosa & Sean Leach SITEC Engineering

William McDonald, Jr., 71 Tonsall Road, Scarsdale, NY
James Sabra, 82 Sanford Road

Abutters present: None.

Attorney Levin suggested since the last hearing, that the units which have already been dug and built and pose no detriment to the abutters and the neighborhood, be allowed to remain, with these crawl spaces being crawl spaces with no intent of being inhabitable or useable. Also, it was noted that in order for a person to enter the crawl space, that person must duck down considerably. Attorney Levin stated his clients would be willing to submit an amendment to the Condo Documents to place restrictions that could be put on the Master Deed. Attorney Levin stated this was a unique situation. As for the border, clearly it was a mistake using the wrong line on the engineer's plans. Also for the record, Mr. Giosa, SITEC Engineering, has never had a complaint against him and he is certified to work in MA, RI and CT. On the original plan, the units were closer to the boundary line, but with the new plan, the units are back over the original units. The buildings are not any closer to the boundary than they were. Attorney Levin stated it was not the intent to make the units any closer.

Mr. Giosa, SITEC Engineering, gave an explanation of how the property line was arrived at and the corrections that had to be made.

Mr. McDonald, Jr. stated that his parents were not developers; his dad is a retired Lieutenant from the Fall River Police Department and his mom is a retired school teacher. My parents have made some mistakes and maybe they should have asked to have deeper basements but they didn't. My parents love Westport, they don't want to commercialize or over-develop Westport. My parents are asking permission to leave the crawl spaces as they are. There is no access from inside of the homes. At this point, retirees have bought a condo and a single person. My parents have spent almost \$100,000.00 on trees, bushes, landscaping, etc. to keep the integrity of the neighborhood. Since inception of this plan, the market has been terrible is making it hard to sell these units. The people who do buy, will need to store their bicycles, deck furniture, etc. My parents gave up a two-story motel and went from a commercial piece of property to residential with a small home. Mr. McDonald stated his parents were just asking the Board to allow them to keep the basements at the height that they have been.

Mrs. McDonald stated this has been a stressful time for her and her husband. Mrs. McDonald stated they were the only people to have been denied a full cellar. No one else has been denied. A grill, furniture for the beach, etc. needs an area in which to be stored away; all other homes have this convenience. Mrs. McDonald stated that she and her husband gave up their income property to do this project, since that time, there have been delays, causing them to not be able to pay their bills. As for Mr. Costa's complaint, she did not understand because they had a good, cordial relationship with him. Before the project, Mr. Costa came to her house and viewed the plans and wished them luck but at the first hearing, Mr. Costa was against the project. Mrs. McDonald stated that when she and her husband bought the property, it was commercial and a lot of work. In 2005, they decided to build condos and remove all the old buildings. Mrs. McDonald stated that their income property was leveled and at this time, they have no income. Mrs. McDonald asked the Board to just give them 6 ft. for storage space in the crawl spaces. Items such as deck furniture and gas grills can't fit. We are willing to give up full basements to have

at least the 6-ft. We have aesthetically improved the property with trees, walls and bushes. The taxes that the Town will now collect will be on 11 units. Mrs. McDonald asked only for justice before they lose their property. Mrs. McDonald stated that she and her husband were advised not to attend the first meeting and that is why they are here tonight. Mrs. McDonald stated looking back, that was a mistake we should have been here. The former Building Inspector, Mr. McNally said we were non-conforming and our 1st option was no good, but our 2nd option was better; now, we have no options because we have no income. Mrs. McDonald stated their last attorney also warned her about filing an appeal with the Board because of time.

Mr. Coutinho stated there was nothing punitive about what happened. The Board tried to give you the 11 units and the decision was to give crawl spaces, at the time, no one said there was a need for basements. As for the 4 cottages, they take more space than the triple unit.

Mr. Harrison stated there was a decision, the units were built and now a cease and desist order has been issued. Mr. Harrison stated to the McDonalds, that lofts were given in these condos. The Board's concern was that the additional space meant more possible sleeping area.

Mrs. McDonald stated the lofts are to be used as art rooms, computer rooms or work-out rooms but not as bedrooms. We are at the Board's mercy and asking to keep what we have now.

Mr. Harrison stated the McDonalds could have come back before the Board, but instead proceeded to build anyway.

Mrs. McDonald stated at the meeting held in April 2007 there were many changes made and they were under the impression that the plan was either denied or approved. Mrs. McDonald stated she was told not to speak because she may say the wrong things. After the meeting, restrictions were imposed and the next day, she and her husband were told not to appeal at that time; they were advised to seek relief later. Mrs. McDonald feels their integrity was damaged.

Mr. Harrison stated at the onsite, the Board members viewed what you have done. Mr. Harrison stated he understood the McDonald's relied on the advice of their then counsel. Mr. Harrison said that now, the McDonalds' still have 4 units to build and would like to have at least 6 ft. in order to get stuff in and out of the crawl space. Mr. Harrison stated he learned the definition of a basement is 7 ft. and for the record, no one in Westport has ever been denied a full basement. As for the storage area you are requesting, it was for the convenience of your residents.

Attorney Dan Perry, representing abutters Paul Costa and Carol Lortie stated it was important to repeat that the applicants were asking for relief of construction. A variance does not derogate from the bylaw; more than 150% of relief has been granted. Attorney Perry stated that more basement space increases intensity use. The applicants wanted full basements and they built them, then decided to ask for permission later. Attorney Perry presented pictures showing damage to his clients property. The pictures show the northern boundary.

Attorney Levin stated that his client wanted to correct the stones, but was told by the abutters to stop. Mr. McDonald has bought 24 evergreens, which are about 18 ft. and has had them installed and his client has also put evergreens on the upper south portion of the property. Attorney Levin stated his client has done everything to satisfy the neighbors.

Mr. Coutinho asked Attorney Perry what his client's position was on not allowing the stones to be moved.

Attorney Perry stated he has not spoke with his clients on that but his clients position is that there is damage and would be seeking a monetary solution, a financial settlement. Mr. Harrison stated the McDonalds have complied with all boundary issues. Attorney Perry stated the property line is where the limited clearing is. Mr. Coutinho stated it is directly behind the buildings. Ms. Fernandes asked Attorney Perry, where his clients were when all the changes were taking place, weren't they interested in what was happening. Attorney Perry stated that Mr. Costa was not living there and Ms. Lortie was not familiar with the property line.

Mr. Leach, SITEC Engineering stated he surveyed the property and saw what has been cleared. The stone wall was always assumed to be the property line but it is not. Mr. Leach stated he has done a survey for abutters, Mr. Costa, Mr. Lees and Mr. Roberts because Mr. McDonald bought the extra property.

Mr. Coutinho stated the Board was looking at two different issues: basements and boundaries.

Mr. Souza confirmed the heights in Attorney Levin's letter at Mr. Coutinho's request. Mr. Coutinho then stated he still has not heard why anyone let this project go forward; he is still not hearing why 48" basements were not built. Attorney Levin stated that at 48", the heating units would not fit. Mr. Coutinho stated there was no legitimate reasons as to why the builders did what they did. Attorney Levin stated the builders were sloppy. The first units have 48" crawl spaces. Mr. James Sabra, developer of Underwood Farms stated the 1st unit, due to size, had to have an electric hot water tank installed.

Mr. Coutinho stated that this was a non-conforming area; and under today's code, 1/10th of the units would not be allowed. The Board tried to balance livable sq.ft. and not overburdening the small area and that is why there were no basements, just crawl spaces and lofts. Mr. Coutinho stated in his opinion, 6 ft. is not a crawl space; the Board gave a decision and your builders did what they wanted to. Today, to build requires 60,000 sq.ft. with 100 ft. frontage. Mr. Coutinho agreed the new units are much better that what was there; but it is not a fair statement saying the McDonalds were denied basements. The spaces were meant to be able to get to any of the utilities. Clearly, the units would sell better with basements and Mr. Coutinho stated he understands the economy has hit the McDonalds hard and without basements, the units are harder to sell and that, maybe hurting this project also. Mr. McDonald stated he and his wife never instructed anyone to do anything sneaky or intentional on this project.

Mr. Leach stated there is a 8 ½ ft. natural drop to the back of the property and there is a 10% grade. The McDonalds' had no knowledge of this. Mr. Sabra stated that Comp Grafts drew the building plans. Mr. Coutinho asked if at any point, did the plans show intent of more than 4-ft. crawl spaces. Attorney Levin stated the builder did what he did and left it that way. The McDonalds are not builders and they relied upon a professional to do his job; they did not walk around with a measuring tape checking his work. Mr. Sabra said the builder poured the foundations and when it came before the Board, it was a rough plan. The rough plumbing caused grades and elevations and somewhere in between, things got lost. Mr. Souza stated the change in height was needed to accommodate gas rather than electric heaters. A clearance of 69" is needed.

Mr. Sabra stated that gas is more marketable than electric and at the time of application to the ZBA, it was not known if a gas line could come down.

Mr. Coutinho asked if a 4 ft. crawl space with a well to house the heater could be used instead of a full basement with full doors.

Mr. McDonald said the opening or access door needs to be able to accommodate a gas grill. Mr. Coutinho stated he did not believe there was a restriction on the door size.

Mr. Souza stated it was agreed upon with the Building Department.

Mr. McDonald stated he was not looking for livable space, it would not happen, all he was looking for is storage, where people do not have to be bent in half and on their knees to storage away summer items. Mr. McDonald said this would help in selling these units; he is desperate.

Mr. Coutinho asked Attorney Levin to include the issue of crawl spaces in the Condo Documents. Attorney Levin stated that presently, the documents say 4-ft. crawl spaces; the amendment will say for the use of utilities and storage.

Mr. Harrison noted that plans were to be submitted under condition # 15 of the decision and the plans have never been submitted.

Motion made by Mr. Tripp to close the hearing at 9:34 PM for discussion. Second by Ms. Lambert. The Board voted unanimously in favor.

Discussion ensued and the following decision amendments were voted:

Condition # 3 of Decision of April 4, 2007

Motion made by Ms. Lambert to amend the variance decision of April 4, 2007 specific to Condition # 3 pertaining to crawl spaces by deleting Condition #3, which provided as follows: Basements are to be eliminated from all units, however, crawl spaces are not to exceed four feet in height will be allowed AND substituting therefore the following new Condition #3: No unit shall contain a basement; however, each unit may have a non-habitable crawl space, provided that no such crawl space shall have head room that exceeds a maximum of 73", including Unit 4, which shall have the head room in the crawl space reduced from 94" to 74"; and provided further that access to any such crawl space shall be from the exterior of a unit only and provided further that any access opening to the crawl shall not exceed a maximum width of 36" on all new units, with units 1-4 and 9-11 to have maximum dimensions of 44" x 48". The purpose of this provision is to allow sufficient headroom to allow installation of gas water heaters and utilities. Second by Ms. Fernandes. The Board voted 4 in favor, 1-opposed (Tripp).

Motion made by Ms. Lambert to amend the variance decision of April 4, 2007 to allow an exterior access to crawl spaces, with a maximum width of 36" on all new units to be built. Units 1, 2, 3, 4, 9, 10 and 11 are to remain at a maximum of 44"x 48"; there will be no interior access from any units into the crawl spaces; this amendment is subject to review and approval by Town Counsel. Second by Ms. Fernandes. The Board voted 4 in favor, 1-opposed (Tripp).

Condition # 15 of Decision of April 4, 2007

Motion made by Ms. Fernandes to amend the variance decision of April 4, 2007, by deleting Condition # 15, which provides as follows: A revised set of plans, which comply with this decision must be submitted to the Zoning Board of Appeals prior to the

commencement of construction AND substituting therefore the following new condition: Before any new building permits or occupancy permits are issued, a revised set of plans and condominium documents showing the corrected property lines shall be submitted to the Zoning Board of Appeals and the Building Commissioner as the Board has no objections to where the buildings are built in the area of the boundary dispute, provided that all units shall meet the applicable zoning setbacks. Second by Ms. Lambert. The Board voted unanimously in favor.

Chairman Harrison advised that any aggrieved party has twenty (20) days to appeal the Board's decision after filing with the Town Clerk.

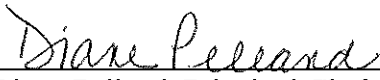
Consider / Reconsider

1. Request was addressed under Item I of the Agenda.
2. Board members will review the draft decision regarding Excel Recycling.
3. **Motion** made by Mr. Tripp to take no action at this time. Second by Ms. Lambert. The Board voted unanimously in favor.
4. **Motion** made by Mr. Tripp to take no action at this time. Second by Ms. Lambert. The Board voted unanimously in favor.
5. **Motion** made by Ms. Lambert to approve the Regular Meeting Minutes of 06-10-09, 07-01-09, 08-19-09 and 08-26-09. Second by Ms. Fernandes. The Board voted unanimously in favor.
6. The Board will review the Ch. 40b and GIS fees submitted.

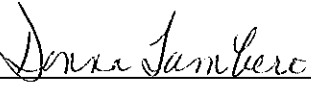
Motion made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting at 10:30 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED: 

Donna Lambert, Clerk