

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
OCTOBER 15, 2014**

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

Also present: Ralph Souza, Building Inspector

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.

Sean & Pauline Dooley / Cara J. Bernier RE: Applicants are seeking an Administrative Appeal of a building permit issued on July 29, 2014 to allow construction of a 40' x 60' storage garage at 977 Main Road. The property is shown on Assessor's Map 80, Lot 21.

Hearing petition: Graham, Coutinho, Simmons, Salva, Kidney
Also present: Ralph Souza, Zoning Enforcement Officer/Building Commissioner
Present: Sean & Pauline Dooley & Cara J. Bernier, applicant
Abutters: Richard Lafrance, 977 Main Road (Ten Cousin's Brick Oven)
Sean Lafrance, 977 Main Road (Ten Cousin's Brick Oven)
Attorney Brian Corey, Jr., representing Richard & Sean Lafrance

Chairman Graham invited all to recite the Pledge of Allegiance.

The public hearing was called to order at 7:00 P.M. by Chairman Graham, who read 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.

Chairman Graham asked for a clarification of the applicant and representative. Mrs. Dooley stated her home is in trust under her daughter's name, Cara J. Bernier, who is present tonight and Mr. & Mrs. Dooley are representing her. Mrs. Dooley noted that Cara J. Bernier is the only trustee. Discussion regarding the legal trust name ensued.

Chairman Graham questioned the application that was filed originally and the amended application that was filed. Attorney Corey stated for the record an objection to the hearing. Attorney Corey stated the main points are that the application itself was not filed within the 30-day time frame for an appeal of the Administrative decision by the Zoning Enforcement Officer; secondly, the applicant had failed to properly identify his clients as part of the application; thirdly, if it was in appeal of the Planning Board Site Plan Review issuance, the applicant should have appealed pursuant to Chapter 40A, Section 17. Attorney Corey stated the Zoning Board has the right to hear this petition but State law says the time for an appeal was not met and should not be heard. Attorney Corey stated that Mrs. Dooley filed originally on August 28, 2014 but withdrew her application and then filed a second application on September 2, 2014. Mrs. Dooley stated she did not withdraw her application, she only amended it. Mrs. Dooley asked Chairman Graham, if the ZBA Secretary could clarify the filings. ZBA Secretary Diane Pelland stated the original filing was on August 28, 2014, which was within the 30-day appeal period; however, the application was amended and the amended application was submitted to the Town Clerk and ZBA for the

permanent record and was stamped at that time, which was September 2, 2014. Ms. Pelland stated there was no withdrawal by the Dooley's, only an amendment to her application, which the Board has allowed in the past. Ms. Pelland stated both applications were sent to Town Counsel for a legal opinion when a question arose about the filing date. Chairman Graham referred to Town Counsel's opinion, an email dated September 25, 2014. Kopelman & Paige's Attorney Ilana Quirk rendered the following opinion, "You requested a further opinion regarding the August 28, 2014 appeal by Ms. Cara J. Bernier of 971 Main Road to the Board of Appeals regarding the July 29, 2014 Building Permit issued to Mr. Sean LaFrance to allow construction of a 40' x60' (i.e., 2400 s.f.) storage garage at 977 Main Road (the Property)", and which relied upon the January 11, 2014 Site Plan Approval Decision issued by the Planning Board for the Property. On August 28, 2014, Ms. Bernier filed the appeal with the Town Clerk's Office and her appeal expressly stated that the appeal was from the site plan approval waivers granted by the Planning Board for the Property. On September 2, 2014, Ms. Bernier submitted an amended appeal, which stated that her appeal was from the July 29, 2014 Building Permit issued for the Property, to the extent that it relied upon the site plan review waivers granted. The facts in this matter are recited in the September 11, 2014 opinion previously rendered, a copy of which is set forth below. You now ask whether Ms. Bernier's appeal is timely. In my opinion, Ms. Bernier's August 28, 2014 appeal to the Board of Appeals was timely taken within thirty days of issuance of the July 29, 2014 Building Permit as required under G.L. c.40A, §§8 and 15 and Zoning By-law §15.8. Under Zoning By-law §15.8, an appeal from a site plan approval decision by the Planning Board on a by-right use shall be made by appeal to the Board of Appeals following action of the Building Inspector on an application for a building permit for the subject use; and, under G.L. c.40A, §§8 and 15, any such appeal shall be initiated within thirty days of the of the action of the Building Inspector. In my opinion, Ms. Bernier's August 28, 2014 appeal is from the Planning Board's January 11, 2014 Site Plan Approval Decision and her appeal expressly noted that the building permit that relied upon the site plan approval was issued on July 29, 2014 and, so, the appeal timely occurred within thirty days of the Building Official's action as required under G.L.c.40A, §§8 and 15 and properly stated that the site plan waivers previously issued were the focus of her appeal as required under Zoning By-law §15.8. The fact that Ms. Bernier amended her appeal, after the thirty day appeal period ran, to attempt to clarify that her appeal is from the July 29, 2014 building permit, to the extent that it relied upon the site plan approval waivers previously granted, does not render her appeal untimely, in my opinion". Mr. Coutinho stated the legal opinion is the ZBA does have jurisdiction of the Planning Board Site Plan Review after a building permit is issued by the Building Inspector and according to Attorney Quirk, the application by Mrs. Dooley was timely. Attorney Corey again stated for the record, his client's objections and that the September 2nd application should be the one considered and not the August 28th application. Attorney Corey then asked for a clarification of what the zoning issues were because this application is very confusing. Building Commissioner Souza stated nothing precluded a non-issuance of the building permit; it was for a 40x60 ft. storage garage, located 15 ft. from the side lot lines, both of which were approved at Site Plan Approval by the Planning Board; also, this property is located in a commercial zone and the permit was for a commercial building. The storage garage is to the rear of the property and at least 200 ft. away from the abutter. The proposal meets dimensional setbacks and the building is further back from the septic system which is 6-8 ft. above grade. Mrs. Dooley stated she and her husband, Sean purchased their property in 1972 and at that time, there was a restaurant there; they have owned the property for the last 40 years. Mrs. Dooley stated she thought Town Bylaws were necessary for protecting the impact on people's properties. The restaurant, Fred & Ann's was quiet and there was no parking in or access to the rear of the restaurant. There were never any problems until the new owners, the Lafrance's took over. The bylaw states, no parking within 5 ft. of a property line and there is supposed to be a 10 ft. barrier. Mrs. Dooley stated an appeal could only be filed after a building permit was issued; which is for the storage building that is on the same piece of property as the restaurant. Mrs. Dooley noted the waivers granted by the Planning Board for landscaping and buffering. Mrs. Dooley presented pictures of the property showing there was no 10 ft. buffer.

Mr. Coutinho stated the restaurant has every right to build a storage garage because they are located in a commercial zone. Mrs. Dooley stated the Planning Board dealt with the storage but Site Plan Review deals with the whole property. Attorney Corey stated that the property has been surveyed 3 or 4 times over the course of time due to varying owners and the property being bought and sold; currently, a survey shows arborvitaes in the back of the property that are on the Lafrance's property. The shed on the Dooley's property is 3 ft. from the property line and in 2003, Mr. Maltais, Building Inspector at the time, issued a letter to the Dooley's of citing an illegal shed. Mr. Dooley stated that was for a shed that was in the front and has since been moved. Attorney Corey stated the only shed on the property is not found in the Building Department records. Attorney Corey stated that of the 3 or 4 surveys, each one shows the properties of the Dooley's and the Lafrance's in a different light.

Chairman Graham questioned if the Site Plan Review showed a parking layout change. Mr. Souza stated that as part of the original plan, no, but the Planning Board did not review parking; also as a note, there is a well on the property and he did not believe parking was allowed over a well.

Mr. Coutinho asked if the property line between the Dooley property and the restaurant are clearly delineated all the way along the border. Mr. Dooley stated there are stakes. Attorney Corey stated the last survey rendered stakes. Mr. Coutinho then asked why there was a dispute of the line. Mrs. Dooley stated she was disputing the cars that are parking within a foot of the line. Mrs. Dooley stated there used to be Russian Olive trees planted along the property line, which were very high and the current owners asked if we could remove and replace them with arborvitaes, so we did and the new trees are planted on our side of the line so the restaurant does not lose any parking; when this was before the Planning Board for a pre-application, their engineer said there would be moving of spaces and changing of the parking lines and paving was a requirement. The parking now is right at the edge of the property; the asphalt has been removed and it is noisy and dirty. Mr. Coutinho stated that is an old issue and not related to the subject matter tonight, which is the issuance of a building permit. Mrs. Dooley stated she understood the whole site would be under review. Mrs. Dooley referred to Article 5.1; Mr. Coutinho again stated that is not related to the storage facility. Attorney Corey stated since 1974, cars have parked in that location and it has been verified by Mr. Souza using Google Earth and the Assessor's records show cars parking against a corral fence. Discussion continued regarding the Dooley property and structures. Mr. Coutinho stated the bylaws require 5 ft. from a property line and road; the engineer's plan show arborvitaes along the property line and the property line show trees staggered and it shows 5 ft. all down the line; the property owner needs to make sure that 5 ft. of parking is adhered to; parking is an enforcement issue but it is difficult without lines.

Mr. Graham stated the Planning Board gave six waivers; which waivers are the Dooley's contesting? Mrs. Dooley stated they were contesting the 10 ft. minimum landscape buffer for the storage but not the rest of the property and pea stone in lieu of pavement. Mr. Dooley stated his concern is the parking not having a 5 ft. buffer and there is a dumpster near the rear property line.

Ms. Salva stated the application amendment states a 40x60 storage shed but the applicant has not addressed this yet; we are hearing everything else. Mr. Simmons felt this matter was not being addressed and motioned the following:

Motion made by Mr. Simmons to close the hearing at 7:50 PM. Second by Mr. Coutinho. The Board voted unanimously in favor.

Discussion

Mr. Simmons stated the application has nothing to do with the storage shed. Mr. Graham stated that the issues that have been indicated are issues that were heard by the Planning Board and have already been addressed. Mrs. Dooley asked who she needs to be in contact with for the parking and the dumpster issue. Mr. Coutinho stated that parking is an enforcement issue that needed to be addressed with the Building Inspector and the dumpster issue would need to be addressed with the Board of Health. If there is a clear violation, it needs to be addressed with the appropriate enforcing agency. Also, Mr. Coutinho stated the ownership of the property needs to be checked for the proper owner; whereas the property is

under a Trust, the owner needs to know the proper, legal ownership name and have all legal documents on record.

Motion made by Mr. Simmons to deny the application for an Administrative Appeal filed by the Dooley's. Second by Ms. Salva. The Board voted unanimously in favor.

The public hearing is concluded at 7:55 PM

Minutes – None.

Decisions – None.

Correspondence – None.

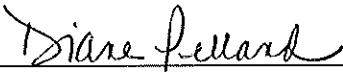
Other Business – None.

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

Motion made by Ms. Salva to adjourn the ZBA Meeting at 8:00 PM. Second by Mr. Simmons. The Board voted unanimously in favor.


Adjournment.

Respectfully submitted,



Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED:



Heather Salva, Clerk of the Board