

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
NOVEMBER 13, 2013**

**Members Present:** Clayton M. Harrison, Chairman  
Donna Lambert, Clerk  
Gerald Coutinho  
Gary Simmons  
Larry Kidney  
Heather Salva  
**Also present:** Ralph Souza, Building Inspector  
**Absent:** Christopher Graham, Vice Chairman

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.

**\*\*Note:** Ms. Lambert left the meeting at 7:15 PM. and returned at 8:00 PM

**Joan E. Casey-Amaral – Casey-Amaral Nominee Family Trust - RE: Applicant is seeking relief from Article 7 Section 7.2 Intensity Regulations in order to convert the existing restaurant into a single family residence on property which already has a pre-existing two-family dwelling. The property is located at 1399-1403 Main Road and known on Assessor's Map 82, Lot 19.**

The public hearing was called to order at 7:00 P.M. with Chairman Harrison reading aloud the Public Hearing Notice. Chairman Harrison 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.

**Hearing petition:** Clayton Harrison, Gerald Coutinho, Gary Simmons, Heather Salva and Larry Kidney.

**Also present:** Joan Casey-Amaral, petitioner  
Casey Amaral, representing petitioner  
Matthew Haines, 1994 Main Road, potential buyer

**Abutters present:** Paul Costa, 1404 Main Road  
Judith M. Beavan, 15 Cornell Road

**Hearing**

Mr. Amaral stated the property has been for sale for a very long time; presently it is under a Purchase and Sales Agreement. Mr. Amaral stated he and Mr. Haines met with the Building Inspector/Zoning Enforcement Officer Ralph Souza and when presented with our proposal of changing the restaurant into a residence, we were denied. The issue is there is a shortage of square footage. The sale of the property is contingent upon the purchaser being able to convert the restaurant into a two-bedroom, two-bath residence. Mr. Amaral stated the hardship is that the property has been for sale for five years; we received only one offer to purchase the property as it is but the financing fell through. The keeping up a vacant building is costly without any income coming in. Mr. Amaral stated he has submitted a complete application on behalf of his mother, Joan Casey-Amaral, the owner of the property with any supporting documentation that will help the Board make their decision. Mr. Amaral gave a brief history of the property. Mr. Coutinho questioned what the use of the house, the other building on the property, was in 1990. Mr. Amaral stated that back when the property was owned by the Dessert's,

a letter from the former Building Inspector John McNally, states that it is a two-family, legally, because the statute of limitation had run out. Mr. Souza stated that a determination was made that it was of that use for more than ten years. Mr. Harrison read into the record a letter dated 04-06-07 from Mr. McNally. Mr. Coutinho asked Mr. Souza if he had been in the house and whether the 3<sup>rd</sup> apartment had been removed. Mr. Souza stated yes, it has been removed.

Mr. Coutinho questioned if this property was located in a business zone. Mr. Souza stated yes, the zone goes up to Cornell Road.

Mr. Coutinho questioned what requirements were being met for this variance; what hardship – financial, soil, topography, etc. Mr. Amaral stated the property has been vacant for five years, we have received an offer to purchase at half of what we were originally asking and obviously, it is costly to keep up without an income. Mr. Coutinho stated that Mr. Amaral was stating a financial hardship? Mr. Amaral stated yes.

Mr. Coutinho stated that in the legal ad, it indicates seeking relief; a variance is a form of relief.

Wayne Sunderland, resident and Planning Board member stated he is familiar with the property; all lots on Main Road and Cornell Road are residential, this is the only single commercial use in this area; the restaurant has not been used in a number of years and it is becoming an eyesore. This is the highest and best use for this area. Mr. Sunderland stated he did not see a big problem to allow the restaurant to go back to a residential use; it does have the frontage but lacks the area.

Judith Beavan, abutter, asked if the building would still be in the same footprint. Mr. Amaral replied yes.

Paul Costa, abutter, asked the Board to state for the record, what a hardship was according to the law. Mr. Harrison stated the shape, topography, soils, financial, etc. Mr. Costa asked whether natural or self-inflicted. Mr. Coutinho stated it goes even beyond that.

Mr. Coutinho stated the building has been vacant for upwards of five years; a vacant property is a worry. The applicant is proposing to change it to a two-bedroom residence. If approved here, it will then fall under the building code. Mr. Harrison stated it will also have to go to all other Boards, such as the Board of Health, Building, etc. and must meet whatever requirements for that particular Board.

Mr. Coutinho asked Mr. Souza if he was aware of any other single-family dwelling unit on this single lot. Mr. Souza stated he is viewing this as a single-family dwelling with an outbuilding; but he is not really concerned about that, his main stumbling block is the area.

Discussion ensued regarding the bylaw that Mr. Souza referred to in his denial letter. Mr. Coutinho asked where in the bylaws, this would be prohibited; if it is in the bylaws, we will also be varying the area. Mr. Coutinho stated he was trying to address the bylaw which says not more than one dwelling on a lot. Mr. Harrison stated this could be a stumbling block in obtaining a mortgage or any financing. Mr. Sunderland stated this is not a new building; this is a conversion of one use to a use common to the neighborhood. Mr. Simmons stated presently, it is a mixed use, if changed, will it hold its commercial value? Mr. Sunderland stated we have mixed uses in all zones of the Town; this area should be rezoned back to residential. Mr. Coutinho stated that the fact is, the building has been there for a long time; he remembered a case involving a barn request to convert it to living space but it was denied because it was not connected to the main house; but we need to find the bylaw dealing with no two separate dwelling units on a single property; we need to address this so we can vary that section of the bylaw also. Mr. Coutinho stated the issue is the use of the two buildings. Mr. Harrison stated we need to determine if this is an issue we can resolve this evening. Mr. Coutinho stated to the

applicant the case law involving the Citgo Rule, which could apply. Mr. Amaral stated he has researched it and it does not apply here. After researching the bylaws, Mr. Souza found the bylaw under the Intensity Regulations Article 7, first paragraph, which states no more than one dwelling on a lot. Mr. Coutinho stated this bylaw does not apply because it states "shall be built"; and the fact that this building has been on the property for a long time, we will be okay.

Ms. Salva questioned driveways; are they sharing one driveway? Mr. Amaral stated presently there is a large gravel parking lot, a small inlet and parking for the restaurant; all of which have access from Main Road. Mr. Coutinho asked what plans the purchaser had for the property. Mr. Haines stated he has plans for removing the cooler, leaving the cement slab and using it for a patio area/deck. The exterior will remain the same minus the cooler equipment from the roof. Mr. Haines stated he may get rid of the parking area, which has basically deteriorated and this way he will be able to plant grass. Mr. Haines stated he is buying the entire property, apartments and all.

Mr. Harrison asked Mr. Souza if he had any issues with the proposal. Mr. Souza stated no, if this is approved, the plans for the conversion to residential and for parking and driveways, will be submitted to his office and he will go from there. Mr. Coutinho noted that a lot can be done by way of aesthetics.

Judith Beavan asked if granted, and the property is sold, will the variance go with the property. Mr. Harrison stated the decision is recorded with the Registry of Deeds for anyone researching titles and deeds. Mr. Coutinho stated this can be granted but if they chose to, they can change it back to a commercial use anytime.

Mr. Harrison stated there was a concern of aesthetics if this is approved in regards to the parking and that the property conforms to a more residential look but that seems to be thought about already. For the record, a set of plans, that the Building Inspector deems necessary, must be submitted to the ZBA file also.

**Motion** made by Mr. Simmons to close the hearing at 7:55 PM. Second by Mr. Kidney. The Board voted unanimously in favor.

### **Discussion**

Mr. Harrison stated that all material has been presented, all questions have been satisfied and now the Board is looking whether to vary the square footage.

Mr. Coutinho stated that the property had enough square footage in practice to support a two-family and a restaurant, there are no issues with congestion and no issues in varying; the area is large and not used and there are two buildings with existing uses.

Mr. Simmons felt this was a better use of the building.

Ms. Salva asked for clarity as to whether a residential could go back to being a commercial use? Mr. Coutinho responded yes, because of the zone it is located.

Mr. Coutinho stated we are varying the footage. The financial hardship is trying to sell as a restaurant; we are being asked to convert it to a dwelling. Mr. Harrison stated before the Board is the request for varying the square footage. Mr. Coutinho stated in terms of the area, it may be best to go to a residential use; it may be an improvement to the area.

Ms. Salva stated she still did not see the hardship, she was still not sure there was a hardship although she did not have a problem with the submitted proposal. Ms. Salva mentioned a case involving a flower shop located on Sanford Road as a comparison because she was not sure of the difference in hardships, it seemed more personal and not one to the land. Mr. Coutinho explained that the economy over the last several years has had an effect on this property and an argument can be made for a financial hardship; this is not in anyone's best interest to allow a building to remain vacant and dilapidate.

**Vote Taken**

**Motion** made by Mr. Simmons to grant the variance due to the fact that a financial hardship was demonstrated by the applicant of not being able to sell the property for a number of years as is and having to provide for the upkeep without an income; and the change of use to residential will be a nicer addition to the area; and final plans for the building and property, which will be submitted to the Building Department must also be submitted to the Zoning Board for permanent file also. Second by Mr. Kidney. The Board voted unanimously in favor.

**Minutes**

**Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of 10-23-13. Second by Mr. Simmons. The Board voted 6 in favor, 1-absent (Graham).

**Other Business**

The Board discussed how they would receive information prior to their meetings, rather than getting it the night of the meeting, in order to review and be better prepared. Ms. Pelland will prepare packets ahead of the meeting and if members wish to pick them up, or most of the information will be emailed ahead of the scheduled meeting.

**Correspondence**

No action was necessary, informational only.

**Motion** made by Mr. Coutinho to adjourn the Zoning Board of Appeals Meeting at 8:15 PM. Second by Mr. Simmons. The Board voted 6 in favor, 1-absent (Graham).

**Adjournment.**

Respectfully submitted,



Diane Pelland, Principle Clerk  
to the Zoning Board of Appeals

**APPROVED:**

Heather Salva, Clerk of the Board