

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
NOVEMBER 30, 2016**

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

Also present: Ralph Souza, Building Commissioner

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.

Pledge of Allegiance

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

John Soares and Louise Soares – RE: Applicant is seeking a variance to subdivide a lot, which currently has a single family dwelling and a small retail commercial building on, creating two lots which will not meet the minimum requirements of the Westport Zoning Bylaws Article 7 – Intensity Regulation sub-section 7.4. The property is located at 651-655 Main Road, Westport, MA and shown on Assessor's Map 70, Lots 15A & 15B.

Members present: Christopher Graham, Gerald Coutinho, Donna Lambert, Heather Salva, Gary Simmons, Roger Menard

Also Present: Ralph Souza, Zoning Enforcement Officer/Building Commissioner
John and Louise Soares, petitioners

Abutters Present: Becky Costa, owner of Salon Blue, 655 Main Road

The public hearing was opened at 7:03 PM with Chairman Graham reading the public hearing notice. Mr. Graham asked that anyone speaking on this petition was to identify themselves by name and address.

Mr. Soares explained his request for a variance stating the property is listed as one lot (#15) with the Registry of Deeds. Mr. Soares stated that when he purchased the property he never followed up to see if the plan was recorded. Mr. Soares stated he was told there were paper files but some of the records had been lost. Mr. Soares stated he purchased the property without a loan so there was never any title search done. Mr. Soares stated he wanted to divide the property because presently, he has a buyer for the small hair salon that is on the property but they do not want to purchase the entire property which has a house on it.

Mr. Graham stated to be able to grant a variance, certain conditions such as shape, topography, soils and size must prove a hardship. Mr. Graham stated he has not heard the hardship yet. Mr. Soares stated he just wants to subdivide the property and sell it.

Mr. Coutinho stated the applicant wants to create two sub-standard sized lots, which they contend, is not a detriment to the area. Mr. Soares stated this property is jointly owned with his wife, Louise, and they want to begin to liquidate their assets, sell off some property and enjoy their retirement lives. Mr. Soares stated he does have someone to sell each of the properties to. Mrs. Soares stated we have a tenant in the hair salon and a tenant in the house; each of our tenants want to purchase the properties but separately.

Mrs. Soares stated we bought this property as one unit from the Potter Family. Mrs. Soares stated the salon is a good business but they can't afford to buy both. Again, Mr. Graham stated the applicant is asking the Board to create two sub-standard lots but there needs to be a hardship.

Mr. Menard stated that there is only one septic and one well on the property; and the property is roughly 1.5 acres. Mr. Coutinho stated the deed shows the conveying of the entire lot with both parties listed as owners when it was bought in 2001.

Ms. Costa, owner of the salon business, stated she has a good business at the salon and would love to continue at that location but she can't afford to purchase both the house and the business. Mr. Soares stated that other people's lives will be affected by this, not just himself and his wife.

Ms. Salva stated that if this was just the land, then maybe the Town was lax but it has been taxed as two separate entities; was there an intent to subdivide. Mr. Souza stated that the two separate tax bills are for just for tax purposes; this lot was split off from the larger lot.

Mr. Coutinho questioned the total acreage. Mr. Soares stated it is approximately 1.5 acres. Mr. Coutinho stated the law is trying to stop people from subdividing their lots; the law has people go to the Planning Board in order to properly subdivide. Mr. Coutinho stated to the petitioners, he thought they were going to need legal assistance on this request; perhaps, the Citgo Rule may apply but you would need legal counsel to look into it. Mr. Coutinho stated the Citgo Rule comes out of a court case in which two substantial buildings were on a single lot but he believed that would have to be done in the courts and not before the ZBA. Mr. Coutinho stated the Board has constraints on subdividing property. Ms. Soares asked if being in a business zone played into this request. Mr. Coutinho stated it only means that the property is located in a commercial area and that has nothing to do with separating the lot.

Discussion ensued regarding the property and the material that was presented. Mr. Coutinho noted there was no survey or deed from the prior owners and the property was purchased in 2001 and is under both names, causing the two lots to merge by law. Mr. Soares stated he owned two properties and he thought they could only be joined if one of the lots did not have a dwelling on it. Mr. Coutinho stated that two undersized lots under the same ownership are merged by law. Mr. Coutinho then suggested to the applicant that they could ask for a continuance of this hearing in order to seek legal counsel.

Mr. Graham stated to the applicants, the options before them tonight would be to have the Board vote on this matter, request to withdraw without prejudice or ask for a continuance in order to do further research and possibly obtain legal counsel.

A brief recess was called as requested by Mr. Soares in order to speak with his wife on the options. Following the recess, Mr. Soares stated he and his wife would like to request a continuance.

7:40PM

Motion made by Mr. Coutinho to grant the continuance to Wednesday, January 11, 2017 at 7:00 PM. Second by Ms. Lambert. The Board voted unanimously in favor.

Action Items

None.

Approval of Minutes

None.

Correspondence

None.

Other business

None.

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

None.

7:35 PM

Motion made by Mr. Simmons to adjourn the Zoning Board of Appeals Meeting. Second by Ms. Lambert. The Board voted unanimously in favor.

Adjournment.

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

APPROVED: Christopher Graham, Chairman