

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
DECEMBER 9, 2015**

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

Members Absent: Donna Lambert

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 by all present.

Pledge of Allegiance

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

Gray's Grist Mill, Inc. - RE: An application request seeking four (4) variances pursuant to Westport Zoning Bylaw – Article 2 – Section 2.4.2.2 to divide property located at 634-638 Adamsville Road into two lots. The property is shown on Assessors Map 85, Lot 32A.

Hearing Petition: Christopher Graham, Gerald Coutinho, Gary Simmons, Heather Salva,
Larry Kidney
Also Present: Roger Menard, ZBA member
Ralph Souza, Building Commissioner
Attorney Eric S. Brainsky, Brainsky Levinson, LLC rep. Petitioner
Bill Smith, Civil Engineering Concepts, rep. Petitioner
Abutters Present: Eve M. Leach – 640 Adamsville Road

Mr. Graham read of the Public Hearing Notice into record and asked those speaking on this petition to state their name and address for the record once recognized by the Chairman.

Attorney Brainsky stated his client was seeking four variances for his property; this is an odd property with 2+ acres and is located on Adamsville Road. Presently, there are two buildings on one lot; commonly known as the Grist Mill/coffee shop. Attorney Brainsky gave a history of the buildings according to the Assessor's record cards. Attorney Brainsky stated his client also owns the lamp shop and the pond across the street. Attorney Brainsky stated his client contacted him several months ago and asked what was the best way to preserve the character of the properties, to make sure that no one can come in and make them look like anything less than what they have been. Attorney Brainsky stated Restrictive Covenants were looked at but unfortunately, in MA, Restrictive Covenants can't be personal; next, condoing the property was looked at but once the Condominium Association takes place, that could be dissolved; so, it was decided the best way would be to divide the property. Attorney Brainsky stated this parcel has received Form A approval but has not been recorded as of yet because his client wanted to come before the ZBA for the variances to make it legally conforming. Attorney Brainsky stated that due to client/attorney privileges, he can only say his client is in negotiations for the Grist Mill side with a potential non-profit organization to preserve the property's historic characteristics. Attorney Brainsky

stated we can divide the property but we need the variances. Attorney Brainsky went on to explain the Massachusetts Supreme Court ruling (Palitz's case).

Attorney Brainsky explained the proposals: new Lot 1 (A) – 71.52 ft. deviation for a frontage of 78.8 ft. and new Lot 2 (B) – 13.48 ft. deviation for a frontage of 136.52 ft.; as for square footage requirements, Lot 1 (A) – we are in good shape but Lot 2, we are looking for a 40,290 sq.ft. deviation for an area of 19,710 sq.ft. and a deviation of 10,290 sq.ft. for 19,710 sq.ft. of contiguous upland.

Mr. Simmons questioned Lot #2 – existing building. Attorney Brainsky stated Lot 2 is the office building; again, my client is marketing it but a covenant will be recorded to maintain the characteristics of the building.

Mr. Coutinho stated in describing this, we should be consistent with the Lot identification; whether it be Lots 1 & 2 or A & B as stated on the application. Mr. Coutinho stated the address is listed as 634-638 Adamsville and that is the way it is described on the Assessor's card. Mr. Coutinho stated he wanted to point out, in the application on page 2, there is a question that asked about all prior applications, appeals, petitions and prior decisions by the ZBA, this was left blank. Mr. Coutinho asked Attorney Brainsky if he was aware that there were three prior decisions on this property from 1979, 1990 and 2000. Mr. Coutinho stated he actually sat on one of those applications. Mr. Coutinho stated to summarize, the decision in 1990, granted restoration of the west building (which would be Lot #2 or property B) into two offices (one open to the general public and the second not open to the general public) and as storage for the Grist Mill. Mr. Coutinho stated it is important because it lets the prospective buyer know what they could and could not do, assuming due to the lack of parking. Mr. Coutinho stated the decision in 2000, was a finding done under the name of Ralph Guild, to allow the construction of a proposed addition to the pre-existing, non-conforming use (Grist Mill) as presently exists on land located at 638 Adamsville Road. As for 1979, it was not clear but it was to allow for the sale of fruits and vegetables on Lot 32, Map 85 subject to a suitable sign being erected for off-street parking in the rear of the building; obviously, way back then, they were concerned about parking. Mr. Coutinho stated it is important for any future owner to do the research on the decisions because tonight, what was read was only a sentence summarizing the petitions. Mr. Coutinho stated he assumed they were recorded at the Registry.

Discussion ensued regarding the differences between the Citgo and the Palitz's cases. Mr. Coutinho stated a subsequent owner may want to change something on the property but they may no longer have the right to do it; but they will have to go the zoning board to do such; new owners need to be made aware of this ruling. Attorney Brainsky agreed with Mr. Coutinho that all future changes should come before the ZBA. Mr. Coutinho stated he also checked with the Planning Board on the ANR, approval not required; and the Planning Board is required by law to do what they have done with this.

Ms. Salva questioned whether the Planning Board should be granting some kind of hardship to approve this based on the lines that are being set before the ZBA. Attorney Brainsky stated the hardship is that there are two buildings dating back over 100+ years on the same property and the fact to preserve the historical characteristics and have the covenants run in perpetuity, the argument here is, the only way to do that is to divide the property and have cross covenants; the hardship is created by the fact that the property is old and the buildings were built before zoning, never mind the subdivision control laws. Mr. Menard stated that dividing the property does not give you cross covenants unless when you divide, you include that. Attorney Brainsky stated we have drafted cross covenants and are negotiating with this entity and it is our intention to record cross covenants; the exact terms are part of the ongoing negotiations. Attorney Brainsky stated the whole reason this is before the ZBA is because his client wanted a way to do this; to be able to preserve the property as it is; so as a condition of the approval, the ZBA can state that the covenants must be recorded when the property is divided.

Mr. Menard questioned the fact that he sees a well on one property but no septic; how will this work once the property is divided because both will need water and septic. Attorney Brainsky stated both water and septic will be shared; easements for the well and tight tank have been approved by the Board of Health. Mr. Coutinho questioned what AP 85, Lot 32A meant and the statement “to maintain the right to use the existing well”; and asked, is this the Grist Mill. Bill Smith, Civil Engineering Concepts stated we prepared the plans and AP stands for Assessor's Plat. Mr. Smith stated as for 32A, that is both lots;

we should have clarified this more by noting Lots 1 & 2. Mr. Smith stated it is the Grist Mill. Mr. Coutinho clarified this is a tight tank and no leaching field. Mr. Smith stated that was correct. Mr. Coutinho asked if the tight tank would take both properties; Mr. Smith stated yes. Mr. Coutinho asked if the tight tank would continue to do so; Mr. Smith stated yes. Mr. Graham asked Attorney Brainsky if the Board of Health approved this. Attorney Brainsky stated on December 2, 2015 an email was sent to Board of Health Agent Jim Walsh. Attorney Brainsky read the email aloud. Attorney Brainsky stated that on December 3, 2015 an email from Nancy Paquet, Board of Health was received and it stated the documents had been reviewed and approved as is by James Walsh, Sr. Health Agent; a hearing was not required. Attorney Brainsky submitted for the record, a copy of that email.

Mr. Souza, Building Commissioner stated the area is zoned residential but the use is a pre-existing non-conforming commercial use. Mr. Souza stated he had no problem with the Zoning Board of Appeals approving this request because it has been presented to him, the same way it is being presented tonight. The buildings will remain the same and nothing will change unless it comes back to this Board. The mill building will continue as commercial; his only concern was that there is not enough parking according to today's standards. Attorney Brainsky stated there is two separate parking areas; one for the Grist Mill and there is some parking for the office in the rear. Discussion ensued regarding parking.

Mr. Coutinho stated there is a question in his mind, which is not addressable anymore but it was only a few years ago-maybe three years, that a coffee shop with snacks was added as a use and in his mind that would have been a change of use because the Grist Mill sold their corn meal and souvenirs and such, but it was not a take out of beverages and snacks. Mr. Coutinho stated on the Assessor's card, between 2012 and 2015, the Assessors listed five different occasions of substantial monies for renovations, which looks like the Grist Mill side of it. Mr. Coutinho stated his point is that, this only added more burden to the parking. Mr. Coutinho stated that he is assuming from what he is hearing tonight, that this non-profit is not going to buy/acquire this property and say this was a coffee shop all along and then decide the rest of the building can be an expanded coffee shop, which would require more parking and make things even worse than they are. We need to be very concerned about the parking there, especially for safety concerns. Mr. Coutinho stated that Attorney Brainsky's client has done a nice job on the property and in that whole area. Discussion ensued regarding the layout of Adamsville Road as being incorrect and that one of the Town's catch basin was actually on Attorney Brainsky's client's property; causing a landswap with the Town. Again, Attorney Brainsky stated his client wants to preserve the historic character of this area. Mr. Coutinho stated when parking is tight, people do park across the street; and there is a crosswalk there now, but he did not believe it was legally allowed to consider parking across the street; he believed, without some action by this Board, the parking needs to be on the property itself. Mr. Souza agreed. Mr. Coutinho stated it could be allowed with a variance.

Mr. Menard asked where the proposed access and utilities easements were. Attorney Brainsky stated it will be a common electric service. Mr. Smith stated there is access from Lot #1 into Lot #2 through an easement. Mr. Coutinho stated there is 11.5 ft from the outer edge of the deck, so a car can fit, tightly but it can fit. Mr. Coutinho asked if there were going to be mutual use agreements for the driveway. Mr. Graham stated his only issue is if someone puts up a fence, etc. Attorney Brainsky stated we have an agreement in place so neither can impede the others ability to access. Mr. Graham questioned fire apparatus access. Mr. Coutinho stated we could condition this that nothing can be constructed or grown on the borderline so as not to impede access; hopefully the agreement will cover that also.

Mr. Menard asked if there was a particular reason why the property was divided the way it is. Mr. Smith stated they tried to utilize the existing stone walls and most of the property is unusable due to wetlands; it basically was the preference of the client. Mr. Menard stated this now requires an extra variance; if it was divided down the middle, you would only need a frontage variance instead of a property variance also. Mr. Smith stated there was no rationale to his client's decision; and, most of this is not usable land. Discussion ensued regarding the wetland and upland areas. Following the discussion, Mr. Coutinho stated if the Board is inclined to approve this, we should act on the side of caution and would be better off not being size specific regarding the upland variance in our decision because there is no delineated wetlands line being shown.

At this time, Chairman Graham recognized abutter Eve Leach. Ms. Leach, stated she liked the work done at the pond but misses the mallard ducks that used to be there and would like that to be restored; also, she questioned what other property Mr. Guild owned in that area other than the pond, the area around the pond, the offices, mill and the marshland. Attorney Brainsky stated he owns the other side of the street. Mr. Coutinho questioned where 640 Adamsville Road was; Ms. Leach stated that her property is in both Westport, MA and Little Compton, Rhode Island, her driveway is immediately to the west of the general store. Ms. Leach stated she did not really have any concerns, the Board seems to have addressed any questions she may have had. Mr. Smith stated that Mr. Guild worked with both MA & RI DEP/DMF on the pond restoration; he is very sensitive to properly maintaining that property.

Mr. Coutinho stated that when the offices were approved by this Board for the Property B building, the use was for storage for the Grist Mill, one office was open to the public and the second office not open to the public; he assumed with this new undertaking, there will be no storage for the Grist Mill; the storage is not necessarily for that building. Mr. Coutinho stated that the current tenant in that building uses the upstairs for storage. Attorney Brainsky stated he did not know that but the realty attorney should be made aware of that; they may need to draw up a shared storage agreement.

Mr. Graham asked if there was any other documentation needed on this petition. Mr. Coutinho stated he did not think so; but he stated the Board will need to make clear in our decision that there will be agreements in place, that we want to make clear the borderline not be obstructed, and that the uses shall be in accordance with previously approved Zoning Board decisions. Mr. Coutinho stated as for hardship; we can draw a hard line or not so hard line; the hardship here can be related to the physical property. Mr. Simmons stated the property is historical and on the National Register. Ms. Salva stated she did not see the hardship other than them wanting to divide the land; this is a self-created hardship. Ms. Salva stated they are dividing into two, which makes her question what are they going to do with the second piece.

Mr. Coutinho stated that Property B has a business there now. Attorney Brainsky stated you are calling it a self-created hardship because it is be subdivided but a self-created hardship is only if you are looking for an immediate financial gain and if it is the only reason why you are looking for a variance; you need to look at the totality of the circumstances, here we have two very old buildings on one property and as is, they are virtually unmarketable; and we have an organization that is in negotiations with my client (we don't know if it will go through or not), and the whole purpose of my client coming before the Board is to protect the property and make sure it is going to remain exactly the same and the only way to do that for the covenants is to have two adjacent properties, with mutually enforceable covenants so the intention is to keep everything the same, yes we are dividing it but the Board can put conditions on this for compliance with prior ZBA decisions and if there are any changes in the future, they must come back before this Board. Attorney Brainsky stated this is a very unique piece of property.

Mr. Graham asked if there was any information. No further information was presented.

8:00 PM

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

Discussion by the Board:

Mr. Coutinho stated there has been a lot of discussion tonight and he did not see a lot of issues; this will be for the good of the properties in the long term because it will more likely be well maintained; a lot of money has been invested in this property over time and the Board received a thorough presentation tonight. Mr. Coutinho stated he believed it would be good to do this.

Mr. Simmons stated the verbiage is already in the covenants and they have pretty well covered all; but he would like in the decision that nothing is to be established along the property line.

Ms. Salva stated she has said her piece already.

Vote taken:

Motion made by Mr. Coutinho to approve the application as presented; allowing for the requested variances for frontage on both Properties A & B, and lot size and contiguous upland on Property B per engineered plan submitted. With the following conditions: A. no physical impediment, by either party of subsequent lots, which would impede traffic flow on the borderline between the two properties; B. there will be cross covenants that address the shared well and septic system and parking access; C. any subsequent owners must comply with this decision and previous decisions by the Zoning Board of Appeals dated March 26, 1979, January 9, 1990 and January 28, 2000; D. there will be restrictive covenants on the historic and unique character of the properties. The demonstrated hardship is related to the significant uniqueness of the property and historic grist mill; and, to the substantial wetlands and lowlands on the property. Second by Mr. Simmons. The Board voted 3 in favor, 2-opposed (Graham, Salva).

Approval of Minutes – None.

Action Items – None.

Correspondence – None.

Other business – None.

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

8:15 PM

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

Adjournment.

Respectfully submitted,

Diane Pelland, Principal Clerk to the Zoning Board of Appeals

APPROVED: _____
Heather L. Salva, Clerk