

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
DECEMBER 16, 2015**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert
Gary Simmons
Larry Kidney
Roger Menard

Members Absent: Heather Salva, Clerk

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.

Pond Meadow Condominium/Louis Andrade Trustee - RE: An application request was received seeking a variance of Westport Zoning Bylaws Article 7.2 and a finding under Article 4.1.3. Applicant is proposing to subdivide the existing parcel into two; creating a 18,667.9 sq.ft. parcel merging it with an abutting parcel while leaving the 6-unit condominium on a second parcel with 143,458.1 sq.ft. with 353 ft. of frontage. The parcel is shown on Assessor's Map 89, Lot 88-1 – Subject Property is located at 63 Prospect Avenue, Westport, MA.

Hearing Petition: Christopher Graham, Gerald Coutinho, Gary Simmons, Larry Kidney and Roger Menard

Also Present: Daniel Aguiar – Sitec, Inc., representing the petitioners
Louis Andrade, (Trustee-Pond Meadow Condominium) petitioner
Donna Lambert, ZBA member
Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Jim Whitin, Planning Board member

Abutters Present: James & Nancy Laird, 63 Boathouse Row
Stella Xifaras, 63 Prospect Avenue – Unit 6

Chairman Graham opened the meeting with the Pledge of Allegiance, announced that the meeting was being recorded under MGL Ch. 30A, section 20(e). Mr. Graham then read of the Public Hearing Notice and invited the applicant to make their presentation.

Mr. Aguiar, Sr. Project Manager at Sitec Engineering, stated he was acting on behalf of Pond Meadow Condominium, who was represented by their Trustee Louis Andrade, who is also the owner of three of the units in the existing six-unit condominium known as the Charlton Mansion project (which was built about 100 years ago) and is located at the terminus of Prospect Avenue. Mr. Aguiar gave the Board a back history of the property; in 1981, the Zoning Board of Appeals granted a variance allowing the conversion of this structure into a six-unit condominium. Mr. Aguiar stated that as part of the application packet, a recorded copy of that decision was included; there was also a summary of what relief was granted from your clerk, Ms. Pelland. Mr. Aguiar stated that about six months ago, an abutter, Mr. & Mrs. Laird, 63 Boathouse Row Realty Trust, (Lot 88-E) which has frontage on Boathouse Row but does not have frontage on Prospect

Avenue approached Mr. Andrade and the other owners of Pond Meadow Condominium about purchasing property, which is shown in pink, on the submitted plan. In general, the proposal that is before this Board is to cut out the pink area from the larger lot (the Condominium lot) which is 88-1, creating an 18,688+/- sq.ft. parcel of land and conveying that piece to the Lairds. The Lairds approached Mr. Andrade regarding that parcel because currently, their parking and access to their home on Boathouse Row, is off of Boathouse Row; and elevation wise, there is a drastic difference from where they are able to park and where they have access to their home. Mr. Aguiar stated the Lairds were present tonight should the Board have any questions for them. Mr. Aguiar stated the Lairds conveyed to him their need and ability to purchase this land so that they can park their vehicles and have better access to their home.

Mr. Aguiar stated that previous to 1981, the little cul-de-sac was not constructed; part of the approval from the ZBA back in 1981 included a number of conditions such as a certain number of parking spaces per unit and construction of the turn-around at the terminus of Prospect Avenue; once that was constructed and a new layout was designed, it basically cut off what we are calling Parcel 1 from the existing condominium building. Mr. Aguiar stated that within Parcel 1, there is a right-of-way that provides access to Lot #88-F&L (Gertler & Clark) and there is also another right-of-way that runs along another side of the property. Mr. Aguiar stated this cut-off piece of land has become an unmaintained portion of the site; again, the Lairds approached Mr. Andrade to purchase this piece of property so they could combine it with their property. Mr. Aguiar stated the hardship that is being proposed this evening is due to the irregular shape of the lot that was originally created and the addition of having to construct the cul-de-sac, which has basically created a no-mans land kind of parcel which is not utilized at all by the owners of 63 Prospect Avenue.

Mr. Aguiar stated in going through prior approvals and zoning regulations and in speaking with the Zoning Enforcement Officer, the Board is charged with making two decisions this evening; one to determine the proposed use and proposed change is not more detrimental than the current use and secondly, to make the determination of whether or not there are grounds for granting this variance to allow this piece to be conveyed to the Lairds. Mr. Aguiar stated again, when going back through zoning, when this parcel was originally created it met the requirements for area and frontage for a six-unit building, being 160,000 sq.ft. with 400 ft. of frontage; by creating this parcel, we will now not meet that requirement, thus coming back to this Board seeking relief. Mr. Aguiar stated this is based on the grounds due to the variance back in 1981, that this lot has basically been cut off and unusable from 63 Prospect and that we would like to have it cut off and conveyed to the Lairds.

Mr. Simmons stated the lot shown in pink has two by-passes, he then asked what will happen to them. Mr. Aguiar stated the easements will remain in effect and fully enforced; anyone's rights as they are currently in place will remain so. Mr. Aguiar stated the Lairds will be buying the parcel with all the restrictions and easements in place.

Mr. Graham asked if the cul-de-sac has been accepted by the Town. Mr. Aguiar stated he believed the road was still private. Mr. Aguiar stated it was constructed according to the conditions of the variance. Mr. Menard asked who plows the road. Mr. Aguiar stated he had no idea. Mr. Laird stated the Town does not plow it, he pays to have it plowed.

Mr. Graham questioned the "lot" (shown in pink); is it a lot as shown on the plan. Mr. Aguiar stated it is a proposed "lot"; this Board would give us the ability to create this lot through the Planning Board process of an ANR plan and then the lot could be conveyed to the Lairds. Mr. Aguiar stated that currently, the easement line is the property line and this is an area that is unmaintained. Mr. Aguiar stated the easements are actively used and will remain in full force and effect. Mr. Aguiar referred to an aerial photo, showing the two easements, and pointed out the area that is not maintained at this time. Mr. Coutinho asked if the only areas maintained are the easements (driveways). Mr. Aguiar stated that was correct.

Mr. Souza stated that by cutting out the area shown in pink, it makes the condominium deficient in area and frontage; and secondly, with the alteration, they are creating a non-conforming area so they will need a variance for the setback, frontage and area and a finding that they are not creating something more detrimental than what is already there.

Mr. Aguiar then reviewed the plans showing easements for water supply for Lots-2 and 3A; and the two driveway easements. Mr. Aguiar stated originally we have a more regular shaped lot, although it still had a

couple of bumps in it but the creation of the cul-de-sac has really created a very odd-shaped, unused piece of land. Mr. Coutinho questioned if the house shown in the aerial view was the house (Laird's) that they were trying to get access to. Mr. Aguiar stated that is correct; there is a small driveway and then they have to traverse the hill to get to the home. Mr. Coutinho asked if they were able to drive up the hill; Mr. Aguiar stated no because of the topography of the land and the way it sits now. Mr. Aguiar stated he did not want to get into the topography of the land because that is not related to the land they are seeking relief for; this lot would only benefit from the relief that is being granted. Mr. Aguiar stated that roughly the difference in elevation from the street (Boathouse Row) to the Laird's home is 24-25 ft.

Mr. Coutinho asked how long the house has been there; and whoever owned it in the past, have they done the same walking that is being done now. Mr. Aguiar stated this parcel was part of the whole complex with a greenhouse, etc. and in the mid '70's was when all the lots were created around the structures that are in place; there are a few historic structures that have been in this area. Mrs. Laird stated their house has been since 1977. Mr. Laird stated it was converted from a greenhouse to a house in 1977. Mr. Aguiar stated the Lairds have continued to live there since the conversion in 1977. Mr. Aguiar referred to a 1978 plan, and stated this is what created the lot lines and there have been a number of plans over time, changing the lot lines; in 1981, this came to the ZBA seeking relief so that the structure at 63 Prospect Avenue was not to be restricted as a single family home. Mr. Aguiar stated this proposal will have no construction and no change of use (current, past or future) for 63 Prospect Avenue; there will be nothing changed, just a conveyance (cutting out the pink parcel) to the neighbors.

Mr. Coutinho asked if there were any ideas for construction, anything at all, other than that for parking. Mr. Aguiar stated from what his clients have told him, this is for parking only and if there are any conditions that the Board wanted to put on, it would be strictly a driveway, parking and landscaping but no structure to be built – no garage, no detached apartment, nothing. Mr. Aguiar stated he understood there was concern and the question that if the two pieces were to merge then what could be built on this property; the Board has the ability to make the determination to create this parcel and it can be conditioned that the lots don't get merged so there is no increased area or frontage; only the fact that the Lairds own both parcels and could use them; the Board could make a condition that the parcels remain separate and as non-buildable.

Mr. Graham asked Mr. Aguiar to explain what the hardship for Lot 88-1 is. Mr. Aguiar stated the only hardship would be the irregular shape of the existing parcel and the fact that the construction of the cul-de-sac, as required under the 1981 permit, has basically cut off the parcel from use. Mr. Aguiar stated that even though the piece was cut-off and was actively used, then he would say there is absolutely no hardship but, this cut-off piece, for which taxes are being paid on, serves no purpose for the owner, it just causes liability due to the easements and it is not an area that is maintained; the cutting out of the piece and being utilized by the Lairds would make it a more viable piece and would enhance the neighborhood.

Mr. Coutinho asked why the applicant would not take the avenue of simply creating a permanent easement for parking. Mr. Aguiar stated the Lairds approached them to purchase it; owning the land or granting an easement are really two different things. Discussion ensued regarding the liability of granting an easement such as an oil spill from a vehicle. If the Lairds purchased the parcel, they would assume the liability; the owners of the condo's would have no responsibility, even if someone slipped and fell due to snow and ice; this is clearly the reason for not granting an easement. Mr. Coutinho stated the new owner would assume all liability; but the present easements, what about that liability. Mr. Aguiar stated the present easements are for passing/access over only, no parking of vehicles or walking from their car to their home. Mr. Aguiar stated the Lairds can explain why they want to purchase this; and it does increase the value of their property.

Jim Whitin, River Road, also a member of the Planning Board. Mr. Whitin stated last night, the Planning Board had received the ZBA Meeting notice and after looking over the proposal for tonight and in speaking with Jim Hartnett, Town Planner; the Board voted 4-0 to send a memo to the ZBA stating basically that the Planning Board has no problems with this request. Mr. Whitin explained how the parcel was developed in order to build the condos. Mr. Whitin stated the proposal tonight, makes more sense; it will allow the Lairds much easier access to their home, especially now that they are older. Mr. Whitin stated the Planning Board is in agreement with this request and there is no reason it should not be done; this makes more sense to have access to a paved road and not having to walk up 25 ft to the house, over uneven ground.

Mr. Laird stated he is requesting a variance and the Board maybe questioning why do this now. Mr. Laird stated the reason is due to his wife, who now has neuropathy, she is having trouble walking and walking up the incline is getting more difficult and will more than likely get worse; that is why we initially approached the mansion.

Stella Xifarias, Trustee of the Condominiums, stated the Lairds have agreed not to block access to the easements. Mr. Aguiar stated, as said before, the easements will remain in effect and so, there will be no parking because it is not allowed, the easement has to remain clear for the people who have rights to use it; this is an access easement.

Mr. Menard questioned if another road would be built up from the cul-de-sac. Mr. Aguiar stated more than likely, a new driveway would be created from the cul-de-sac up to the Laird's door with a parking area. Mr. Coutinho asked if it was physically feasible to do that; Mr. Aguiar responded yes and much more easily than trying to do this from Boathouse Row. Mr. Graham stated that there is access potentially from Boathouse Row (driveway). Mr. Aguiar stated to get to the house from Boathouse Row, you would have to build a series of handicap ramps and as for a driveway, it must have a 10% grade with a zig-zag design to get to the house.

Ms. Lambert stated her concern was with the variance and the hardship of a substandard size lot.

Mr. Graham stated the variance was going to Lot 88-1 (condos). Mr. Aguiar stated the only hardship is that the cul-de-sac cut the property and created this cut-off, under utilized parcel, which could benefit the neighbors greater than the condo owners. Ms. Lambert questioned the total area once the parcel is conveyed. Mr. Aguiar stated he was not sure but the Board could condition it as a two separate parcels. Mr. Coutinho stated we could condition it to be a non-buildable portion of the lot, for access only and parking – no sheds or anything. Discussion ensued regarding the lot size; condition of the property and of the parcel being created. Mr. Menard questioned Mr. Souza, that by adding 18,000 sq.ft. to 60,000 sq.ft. wouldn't that make it beneficial to building something. Mr. Souza stated it could be conditioned by the Board, that the parcel is not to be built on; if not conditioned, a future owner may come in and be able to do something depending on the bylaws in effect.

7:35 PM

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

Discussion by the Board

Mr. Coutinho stated he drove down to the area and viewed it; the area is rough and non-maintained. Mr. Coutinho stated he could not identify the Laird's house, so he does not have any idea of the difference in elevation, other than what has been presented tonight. Basically, Mr. Coutinho stated he did not see an issue in doing this; it is very clear, in looking at the plan and this little piece, that this was concocted to work around the rules at the time (1981) to get the frontage and area for the condos; from a practical point of view, it does not seem necessary but it was at the time. Mr. Coutinho stated that as long as the Board puts some condition such that it is only to be used for what they are asking for, it kind of helps out everybody. Mr. Coutinho stated it takes some of liability burden off of the condo group; the liability of the easements will be transferred to the new owner. Mr. Coutinho stated he saw no harm in this and it is not a usable piece of property as it stands for any constructive purpose. Mr. Coutinho stated it is clear that the layout was created to go along with the rules; no purpose would be served by not allowing this because no one is using it now; if someone can benefit by making an access to their property, especially under the current situation, this Board would be serving them well. Mr. Coutinho stated this is a common sense thing; we need only to put conditions in our decision, regarding no structural construction, such as buildings, sheds, garages, etc. on this new portion of their lot, to ensure that the house will not become larger, and that the existing easements will continue with subsequent owners.

Ms. Lambert stated the easements that are in place right now, who has access, do they go right down to Boathouse Row. Mr. Aguiar explained the present easements.

Mr. Simmons stated he agreed with Mr. Coutinho as long as no construction is allowed. Ms. Lambert stated we need this to be conditioned that the lots not be in common ownership; Mr. Coutinho stated he did not know if that could be enforced, but the Board can restrict just that particular area from construction and further subdividing; just to be used for parking and a driveway. Mr. Graham stated we can all agree, this is not more detrimental to the area from what is there now; the only thing we can hang our hat on, is the odd shape of the property in regards to a hardship. Mr. Graham stated his problem is that we are creating a more non-conforming use of Lot 88-1. Mr. Coutinho stated that from a practical point of view, he did not see that as being an issue.

Vote taken:

Motion made by Mr. Coutinho to approve the application as presented; included with the application were presented plans, which are part of this decision. The conditions, which are to apply to the subject 18,667.9 sq.ft. parcel to be separated from Lot #88-1 are as follows:

1. There will be no further subdivision of the property;
2. It is only to be used for parking and a driveway for Map- 89, Lot 88-E;
3. All existing easements will remain in effect.

The hardship is related to the unusual layout lines of Lot #88-1 in the 1981 subdivision. Second by Mr. Kidney. The Board voted unanimously in favor.

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.

7:45 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, Principal Clerk to the Zoning Board of Appeals

APPROVED: _____
Heather L. Salva, Clerk