

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
FEBRUARY 15, 2017**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Heather Salva, Clerk
Roger Menard
Donna Lambert
Peter Borden
Also present: Ralph Souza, Building Commissioner
Absent: Gary Simmons

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: Continued hearing on applicant 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: Graham, Coutinho, Lambert, Salva, Menard and Borden
Members Absent: Simmons
Also Present: Ralph Souza, Zoning Enforcement Officer/Building Commissioner
John and Louise Soares, petitioners
Attorney Robert Allen, representing petitioners

The continued hearing was opened at 7:01 PM. Chairman Graham read the continued public hearing notice.

Attorney Allen stated there is one more thing that he would like to add that was not in his brief; one being an exemption under Subdivision Control Laws G.L.C. 41, Section 81L and the other being in the variance argument itself, one additional point under the exclusion of MGL c.41 Section 81L, if two structures were existing at the time, you can subdivide regardless of whether it meets zoning or not. Attorney Allen also stated that he was informed by his client that there are two separate water wells on the property and there are remnants of a structure on the 655 property, so we do believe that two separate structures had existed on these lots at the time; we do not have pictures but clearly there is evidence of such. Attorney Allen stated that what Section 81L states is that if there are two existing structures, independent of each other. Attorney Allen stated thae idea was it was habitable or else why would you have two separate pumps on a fairly small piece of land.

Mr. Graham stated the Board did seek legal counsel in regards to the application and in the opinion of Town Counsel, this Board does not have jurisdiction to subdivide a piece of property, that could only be done by the Planning Board. Attorney Allen agreed.

Mr. Graham stated at this point, the Board can only do one of two things; allow the petitioner to withdraw without prejudice, so the applicant can go to the Planning Board and if needed, could come back to this Board within two years or the Board could deny the application as it stands.

Attorney Allen stated through the Planning Board, it would be an ANR plan. Attorney Allen asked if it was possible that this Board take a position on the exemption under Section 81L so at least the Planning Board has some direction. Attorney Allen stated it is not unheard of and he has done that before where they were backed into an ANR, which is kind of what we are doing here. Attorney Allen stated in the alternative, he did provide the Board with a variance argument. Discussion ensued.

Mr. Coutinho stated if you recall at the first hearing held, he indicated his opinion was at the time, that he did not think this Board had the jurisdiction or the authority to do what was being requested. Mr. Coutinho stated he also said he would love to see it happen and he still does. Mr. Coutinho stated he wants to see this happen, it makes common sense, and it is not a detriment to anybody but he would not want to put the Town or the applicant into a position where we did something that we did not have the jurisdiction to do and then down the line, a subsequent owner has a problem. Mr. Coutinho stated he brought up the potential of the Citgo Rule, even though he did not know if it would apply. Mr. Coutinho stated that Town Counsel has opined and backed up her first opinion, that this Board has no jurisdiction and that this request needs to go to the Planning Board with an ANR plan; it would be the Planning Board that the applicant would have to convince that this falls under Section 81L. Mr. Coutinho stated the worse case scenario, we allow the petitioner to withdraw without prejudice; and if the Planning Board approves an ANR subdivision, it would not automatically mean that any of the zoning bylaws are varied without coming back to this Board but the door would be left open to come back by withdrawing without prejudice. Attorney Allen stated that is what the Palitz case is about.

Mr. Graham stated in regards to a request of support by this Board to the Planning Board, the minutes of these hearings could always be presented to the Planning Board showing our discussions.

Attorney Allen stated his client is here due to denial by the Building Commissioner; his client needs a variance for which he did provide information on; he did not know if that was an indication that the Board read it, decided it did not meet the standards of a variance and for that reason it is part one, an ANR and then part two is the variance, either one of which his client would be happy to get. Attorney Allen asked if the Board wanted to take up the variance discussion. Mr. Graham stated before the Board could give variances to two subdivided parcels, we have to know what they are. Attorney Allen stated an original subdivision plan was put in and that is what was originally denied. Mr. Menard stated it was denied because it was not recorded. Attorney Allen stated no, it was because it did not meet dimensions.

Mr. Souza stated it was denied because it was not recorded. Mr. Souza stated that if you read the deed and followed the map, it was two buildings on one lot. Mr. Coutinho stated the prior owner purchased it as one parcel and that is what created the issue.

Mrs. Soares asked the Board, couldn't this Board have directed us two meetings ago to the Planning Board. Mr. Graham stated we received Town Counsel's second opinion today. Mrs. Soares asked, this Board could not see that this was going to take this route. Mr. Coutinho stated absolutely not. Ms. Lambert stated that fact was brought up at the very first meeting. Mr. Coutinho stated it was brought up as a doubtful thing at the first meeting; this Board is not here to give legal assistance, that is why you have an attorney. Ms. Salva stated it was presented as a subdivision that had not happened yet.

Attorney Allen stated his client would like to request a withdrawal without prejudice. Attorney Allen then submitted the request in writing to the Board.

Motion made by Mr. Coutinho to accept the request to allow the petitioner to withdraw without prejudice. Second by Mr. Menard. The Board voted unanimously in favor.

The hearing is adjourned at 7:20 PM.

Action Items

None.

Correspondence

1. On 02/02/17, Attorney Brainsky sent via email a request to the Westport Zoning Board of Appeals to withdraw with prejudice the application filed on behalf of Anne E. Grape, Trustee of the Anne E. Grape 2000 Trust due to the State issuing the necessary relief his client had been seeking. **Motion** made by Ms. Salva to acknowledge receipt of the correspondence from Attorney Brainsky and to allow the petitioner to withdraw with prejudice. Second by Ms. Lambert. The Board voted unanimously in favor.

Approval of Minutes

1. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of February 3, 2016. Second by Ms. Salva. The Board voted 5 in favor, 2-abstentions (Simmons, Lambert).
2. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of March 16, 2016. Second by Ms. Salva. The Board voted 6 in favor, 1-abstention (Lambert).

Other business

None.

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

None.

7:30 PM

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

Adjournment.

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

APPROVED: Christopher Graham, Chairman