

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
JANUARY 11, 2017**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Gary Simmons
Roger Menard
Donna Lambert
Also present: Ralph Souza, Building Commissioner
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.

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, Simmons, Menard and Borden
Also Present: Ralph Souza, Zoning Enforcement Officer/Building Commissioner
John and Louise Soares, petitioners
Attorney Robert Allen, representing petitioners
Members Absent: Heather Salva
Also Present: Becky Costa, owner of Salon Blue, 655 Main Road
Attorney Matthew Costa, representing Ms. Costa

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

Attorney Robert Allen opened by reading a statement to the Board as to why the variance is warranted. Attorney Allen stated the proposal satisfies a variance; for 60 years, this property has been both commercial and residential and both structures have operated separately. Attorney Allen stated the tenant at 655 Main Road (Salon Blue) wants to purchase the property but can't afford to buy both. Attorney Allen stated this property was bought to be able to separate it but the subdivision plans were never recorded, which his clients were not aware of when they purchased the property; his clients have always viewed this property as two separate properties. Attorney Allen stated if allowed to separate these properties, nothing in their appearance will change.

Mr. Coutinho stated this was conveyed by deed as a single property, not described as two separate lots. The owners never questioned the subdivision plan not being recorded; the plan was prior to the present owners but that is irrelevant to this because the applicants purchased the property as one lot. Mr. Coutinho stated he was not convinced that this Board could legally allow this variance request. Mr. Coutinho asked why the Citgo Rule was not addressed by Attorney Allen. Attorney Allen stated that was not conveyed to him by his clients from the prior hearing. Mr. Coutinho questioned that if the courts have considered a merging of lots, can those lots become un-merged. Mr. Coutinho also stated, who was paying the tax bills because by paying the tax bills, it would show that the owners had control of the lot.

Attorney Allen stated as clarification, this was never a merged lot; this is a unique lot and in this zoning district, there is no other property with a separate home on the same lot as a business. Attorney Allen stated the hardship is real. Mr. Menard stated the hardship is just for maximizing profits off of the sale of the property. Attorney Allen stated he appreciated what was being said but the same people will be staying on the property. Mr. Menard stated that if the Board approved this, we would have created two undersized lots and we would be sending that into the future.

Mr. Coutinho stated his recollection is that initially, this was a residential house and a barn; it would have been illegal to have two residential houses; up until two years ago, we passed a detached in-law apartment bylaw but this is not an in-law apartment; this is a house and business on one lot. Mr. Coutinho stated he still needed to be convinced that the Board has the legal authority to do this. In response to Attorney Allen's offer to place a condition in the decision that no future building, construction or changes could take place, Mr. Coutinho stated that in the future, they could add a business if all the setbacks are met; legally, they could add to either structure; subdividing the lot would make it more non-conforming. Mr. Coutinho stated he would like the opportunity to pass this by Town Counsel in order to get an opinion as to whether the Board can legally subdivide this property. Mr. Graham stated he would like to absorb this and to seek legal counsel's opinion also.

Attorney Matthew Costa, representing Rebecca Costa (prospective buyer of the property and owner of Salon Blue) stated for the record, he completely agrees with Attorney Allen. This is a unique situation and a variance will only preserve the property as status quo. Attorney Costa stated that if the Board chose to grant the variance, they could also impose conditions. Attorney Costa stated this proposal as presented would not have an impact on the abutters and this is an opportunity to keep Ms. Costa's business in Town. Attorney Costa stated there is definitely legal issues but there would be no development on the property and Ms. Costa wants to continue keeping the property nice.

Mr. Coutinho stated he would like to see this happen also but legally. Mr. Coutinho also stated he would not want to put any conditions that would curtail any future development on the property.

7:37 PM

Motion made by Ms. Lambert to continue the hearing to Wednesday, February 1, 2017 at 7:00 PM. Second by Mr. Coutinho. The Board voted unanimously in favor.

Jeffrey & Sandra Dias, Trustees of the 929 Pine Hill Road Real Estate Trust – RE: Applicant is seeking a finding under Westport Zoning Bylaws, Article 4.1.3, that an alteration to the pre-existing, non-conforming uses of the property, specifically, the pre-existing convenience store/package store use be expanded to include the entire 2,900 sq.ft. +/- area of the building, with the pre-existing automobile repair shop and inspection station being eliminated, shall not be substantially more detrimental than the existing non-conforming uses to the neighborhood. The property is located at 929 Pine Hill Road and is shown on Assessor's Map 38, Lot 23.

Voting on Petition: Graham, Coutinho, Lambert, Simmons and Menard

Also Present: Peter Borden (ZBA Member)
Ralph Souza (Zoning Enforcement Officer/Building Commissioner)
Jeffrey Dias (petitioner)
Attorney Richard Stang (representing petitioner)

Abutters Present: Timothy Gillespie, 137 Horseneck Road

Chairman Graham called the hearing to order at 7:38 PM with read the Public Hearing Notice and stated that if anyone wished to speak on this petition, to give their name and address for the record.

Attorney Stang stated he was representing 929 Pine Hill Road. Attorney Stang stated this property is located at the intersection of Hix Bridge Road and Horseneck Road. Mr. Dias, his client/petitioner would like to eliminate the auto repair section and inspection station in order to expand on the convenience store, leasing the entire property. The currently approved existing site plan was then reviewed by the Board. Attorney Stang stated the changes to take place will be the expansion of the existing convenience store; the

elimination of some of the existing parking spaces. Attorney Stang stated that even with the elimination of parking spaces, the remaining parking spaces will still be above the required number of parking spaces. Attorney Stang said that items such as juice, milk, lottery and sandwiches will still be sold but there will be an addition of an expanded section for local Westport food items. Attorney Stang stated his client has spoken with a number of local farmers in order to provide locally produced goods to be sold in his store, thus increasing the local economy. Attorney Stang stated the footprint of the building will not change.

Mr. Dias stated he is going in this direction because it is getting tougher to compete in the auto repair industry. He will be closing his auto repair shop and replacing it with more convenience store items for his customers because they are asking for more convenience-store type items. Mr. Dias stated that right now, there is nothing around this area like this; no convenience type store unless you travel. He stated he wanted to keep it with a country-like feel to the store and he will be able to bring the items in that are being requested by his customers. Mr. Dias stated that during the summer, he does experience more business due to the beach traffic but in the winter, it is slower and only locals are around. Mr. Dias stated that he has been in the auto repair business for the last 43 years and he has just had enough and would like to make a change.

Mr. Souza stated Mr. Dias will have to do a code synopsis but otherwise, he has no problems with what is being proposed.

Mr. Dias stated the inspection station will be going somewhere else and he already has a buyer for it.

Mr. Coutinho questioned the reduction of parking spaces. Mr. Dias stated the reduction will allow for customers being able to backup and enter the road. Attorney Stang, at this time, presented a signed petition by residents in favor of the proposal.

Mr. Coutinho stated his concern was of delivery trucks, the timing of the deliveries and the blocking of the roadway during deliveries. Mr. Dias stated we focus on keeping our delivery trucks out of the way at all times; we keep constant watch to make sure. Mr. Dias also stated that with the expansion, it will give him more storage space, allowing him to buy in volume and that will eliminate the need for more frequent deliveries. Mr. Dias stated he will make sure that all deliveries will be parked on the side away from the road traffic; in addition, he will be installing signage to that effect and removing all signage for the repair business. Mr. Souza stated as part of the building permit application, signage and lighting will be addressed. Mr. Coutinho stated that legally, in the future, Mr. Dias could sell the business, we need to be cognizant of this fact, to make sure that any sale in the future, the new owners will need to be made of aware of all of this.

Tim Gillespie stated he was not looking forward to the repair business closing but this is a wonderful addition for the south end of Westport; Mr. Dias runs a clean, efficient business and he looks forward to his continued success.

No further input was received.

8:05 PM

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

Discussion

Mr. Coutinho stated he agreed with Mr. Gillespie and fully supports this proposal, he just wants to make sure safeguards are in place for the abutters.

Vote taken:

Motion made by Mr. Coutinho to approve the application for a Finding with following conditions, (1) the hours of operation will be 6:30 AM to 9:00 PM (7 days a week); (2) the owner will make a concerted effort to ensure that all delivery vehicles and customer vehicles will not impede the traffic flow in the area; (3) all prior existing conditions of the ZBA decision dated August 8, 2014 at minimum, be maintained; with the Board finding that the expansion of the pre-existing convenience store/package store will not be substantially more detrimental than the existing non-conforming uses to the neighborhood. Second by Mr. Menard. The Board voted unanimously in favor.

The hearing is concluded at 8:09 PM.

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.

8:10 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